



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

October 22, 2019

XX
Superintendent
Talladega City Schools
P.O. Box 946
501 South Street East
Talladega, Alabama 35160

Re: OCR Complaint No. 04-13-1302
Letter of Resolution

Dear Superintendent XX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint received by our office on April 30, 2013 against the Talladega City School District (District), alleging discrimination on the basis of race and sex, as well as retaliation. The Complainant, an attorney, filed this complaint on behalf of his client's daughter, an African American female student (Student), who previously attended Zora Ellis Junior High School (School).

The Complainant alleged that the District discriminated against the Student on the basis of race by suspending her for slapping a Caucasian male student (Classmate) who had kissed her on the lips without her permission, but not disciplining the Classmate for the kiss. The Complainant also alleged that the District engaged in discrimination based on sex by failing to appropriately respond to complaints of sexual harassment arising from the kissing incident. The Complainant contended that the Student reported the kiss to a Physical Education teacher (Coach), who inappropriately responded, "You just got a little sugar from your sweet thing." The Complainant added that the Student's parent (Parent) reported the kissing incident as well as the Coach's response to District administrators and the District failed to respond appropriately. Finally, the Complainant alleged that the District retaliated against the Student after the Parent reported the kissing incident to the Superintendent by: (a) giving the Student two unexcused absences on March 14 and 15, 2013, and (b) giving the Student in-school suspension for chewing gum in class.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. OCR also 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 education program

or activity receiving Federal financial assistance. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI and Title IX.

OCR initially opened the race discrimination, sex discrimination, and retaliation issues based upon the allegations. By letter dated April 24, 2014, the Complainant advised OCR that he wished to withdraw all complaint allegations except for the sex discrimination allegation. Therefore, OCR discontinued its investigation of the withdrawn racial discrimination and retaliation allegations, which are being dismissed¹ as of the date of this letter; OCR proceeded with an investigation of only the sex discrimination allegation.

OCR investigated whether the District failed to provide a prompt and equitable response to a complaint that the Student was being harassed based on sex, in non-compliance with Title IX and its implementing regulation at 34 C.F.R. §§ 106.8 and 106.31. During the course of OCR's investigation, OCR also reviewed the District's compliance with Title IX procedural requirements.

As part of its investigation, OCR reviewed documents submitted by both the Complainant and the District, which included student disciplinary records, witness statements, a summary submitted by the Parent, the Student's affidavit, school board policies, student codes of conduct, and grievance procedures. OCR also reviewed the District's and School's websites. In addition, OCR interviewed the former superintendent (Former Superintendent), the School principal beginning during the 2013-2014 school year (Principal),² the assistant principal throughout the relevant time frame (Assistant Principal), and the Coach.

Prior to the conclusion of OCR's investigation of the sex discrimination allegation, OCR determined that the Student had reached the age of majority and that written consent from the Student was necessary before OCR could complete its investigation. Despite requests to both the Complainant and the Student, OCR did not receive the Student's executed consent form. Therefore, OCR is dismissing the sex discrimination allegation as of the date of this letter.³

Although OCR is dismissing the sex discrimination allegation, during the course of its investigation, OCR found compliance issues with the District's Title IX Coordinator and notice of

¹ Section 108(n) of OCR's Case Processing Manual states that OCR will dismiss an allegation when the complainant withdraws the allegation.

² The individual who served as the principal during the 2012-2013 school year, when the alleged incident under investigation in this complaint occurred, retired at the end of that school year. The District's counsel informed OCR that the District was unsuccessful in its attempt to reach the former principal.

³ Section 105 of OCR's Case Processing Manual states that a complainant filing on behalf of or pertaining to another person(s) is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18 or one who becomes 18 while the complaint is under investigation or in monitoring. The complainant will be informed that the complaint will be dismissed if written consent is necessary in order to resolve the complaint and is not received within 20 calendar days of the date that the consent form was provided with the acknowledgement letter or the date OCR requests the consent form from the complainant, whichever is earlier. If OCR does not receive a signed written consent form, and it is necessary in order to resolve the complaint, the complaint will be dismissed and the complainant so informed in writing.

non-discrimination, which are further discussed below. The District entered into an agreement to resolve these issues pursuant to Section 303(b) of OCR's Case Processing Manual.

Legal Standards

The Title IX implementing regulation at 34 C.F.R. § 106.8(a) provides that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its non-compliance with or alleging any action which would be prohibited by Title IX. The recipient shall notify all of its students and employees of the name, office address, and telephone number of the employee or employees appointed.

In addition, the Title IX implementing regulation at 34 C.F.R. § 106.9(a)(1) provides, in relevant part, that each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students, and parents of elementary and secondary school students that it does not discriminate on the basis of sex in the educational program or activity which it operates and that it is required by Title IX not to discriminate in such a manner. The notice must also state that inquiries concerning the application of Title IX may be referred to the employee designated pursuant to 34 C.F.R. § 106.8 or to the Assistant Secretary for Civil Rights.

Title IX Coordinator and Notice of Non-Discrimination

At the beginning of OCR's investigation of this complaint, the District submitted to OCR a document that included a "Title IX and Section 504 Coordinator Notification," which set forth the name, office address, and telephone number of its Title IX Coordinator. OCR has determined that the individual identified as the Title IX Coordinator is no longer employed by the District and OCR has found no disseminated information about a current Title IX Coordinator. Specifically, OCR was unable to locate the Title IX Coordinator information on the District's or School's websites or in any updated documents submitted by the District to OCR for review, including the 2018-2019 Student Handbook or the Employee Handbook.

The District has a notice of non-discrimination in its 2018-2019 Student Handbook. The notice contains a statement that the District does not discriminate on the basis of gender, marital status, and several other bases in its programs, activities, and employment practices. The notice references Title IX and several other statutes. However, the notice fails to state that inquiries concerning Title IX may be directed to the employee who is responsible for coordinating the District's Title IX compliance efforts⁴ or to the Assistant Secretary for Civil Rights.

The enclosed Resolution Agreement (Agreement) will remedy the above Title IX procedural deficiencies. The Agreement requires the District to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and to notify all students

⁴ The notice identifies the Section 504/ADA Coordinator, specifying that she can be contacted for information about services, activities, and facilities that are accessible to and usable by individuals with disabilities, but it does not state that she also coordinates Title IX matters or refer to a separate coordinator for Title IX matters.

and employees of the name, office address, and telephone number of the employee(s) appointed. In addition, the Agreement requires the District to revise its notice of non-discrimination to satisfy the requirements of 34 C.F.R. § 106.9(a)(1) and to publish and disseminate the revised notice of non-discrimination to the District's faculty, staff, and students.

Conclusion

OCR will closely monitor the District's implementation of the Agreement to ensure that it is fully implemented and that the District is in compliance with Title IX. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Title IX.

This concludes OCR's investigation of this 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, assists, or participates in a proceeding under a law enforced by OCR. 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, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR appreciates the District's cooperation during the resolution of this complaint. If you have any questions regarding this letter, please contact Vahn Wagner, Senior Attorney, at (404) 974-9392 or Vahn.Wagner@ed.gov.

Sincerely,

Melanie Velez
Regional Director

Enclosure (Signed Resolution Agreement)

cc: XX, Esq. (Counsel for District) (w/ encl.)