



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

August 30, 2018

Dr. Sharon W. Griffin  
Chief, Achievement School District  
1350 Concourse Ave., Suite 434  
Memphis, Tennessee 38104

Re: Complaint #04-14-1673

Dear Dr. Griffin:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on July 18, 2014 against the Achievement School District (District) alleging discrimination on the basis of sex. Specifically, the Complainant alleged that the District discriminated against a student (Student) at Corning Elementary School (School) by allowing a male student to bully and sexually assault the Student during the 2013-2014 school year.

As a recipient of Federal financial assistance, the District is subject to the provisions of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Sections 1681 *et seq.*, 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 from the Department.

OCR investigated the following legal issue: whether the District failed to respond promptly and equitably upon receipt of notice that the Student was subjected to sexual harassment or violence, and if so, whether the failure to provide a prompt and equitable response allowed the Student to continue to be subjected to a hostile environment, in noncompliance with Title IX and its implementing regulation at C.F.R. §§106.8 and 106.31.

During the complaint investigation process, OCR interviewed the Complainant and District staff, including the District Portfolio Administrator, District Portfolio Compliance Manager, and the School Principal. OCR also reviewed District harassment policies, grievance procedures, and documents related to the Complainant's internal grievance. OCR reviews evidence under the preponderance of the evidence standard. Under this standard, 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.

On January 26, 2018, the Complainant withdrew her complaint allegation. Accordingly, OCR did not make findings concerning the District's response to her individual complaint. However, OCR did proceed with findings concerning the District's harassment policies and grievance procedures.

After a careful review of the evidence, OCR has determined that there is sufficient evidence to support a finding that the District is not compliant with Title IX and its implementing regulation with regard to the District's policies and procedures related to the issue of the complaint. Set forth below is a summary of OCR's findings. To resolve this compliance issue, the District entered into the enclosed Resolution Agreement (Agreement). OCR will monitor the implementation of the Agreement to ensure that it is fully implemented. The factual and legal basis for OCR's determination is below.

### **Legal Standards**

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe.

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. When responding to harassment, a recipient must take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action.

It may be appropriate for a school to take interim measures during the investigation of a complaint. Such measures should be individualized and offered as appropriate to either or both parties involved in an alleged incident of sexual misconduct prior to or during an investigation.

If a school determines that sexual harassment occurred it should take reasonable, timely, age-appropriate and effective corrective action, including steps tailored to the specific situation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. A school should also take steps to prevent any retaliation against a student who made a complaint or was the subject of harassment.

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

The Title IX implementing regulation at 34 C.F.R. § 106.8(b) requires each recipient to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

In evaluating whether a recipient's grievance procedures satisfy the foregoing requirements, OCR reviews all aspects of a recipient's policies and practices, including among other factors, the following elements:

1. Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
2. Application of the grievance procedures to complaints alleging harassment carried out by employees, other students, or third parties;
3. Provision for adequate, reliable and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
4. Designated and reasonably prompt time frames for the major stages of the complaint process;
5. Notice to the parties of the outcome of the complaint; and
6. Assurance that the school will take steps to prevent recurrence of any harassment and to remedy its discriminatory effects on the complainant and others, if appropriate.

The Title IX implementing regulation at 34 C.F.R. § 106.9 requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and others, 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 of nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to the Department's Assistant Secretary for Civil Rights, i.e., OCR.

## **FACTUAL FINDINGS**

### **General Background**

The District is a collection of autonomous charter management organizations (CMOs) across Tennessee. The witness stated that the schools are considered autonomous; there may be different rules applicable to the individual schools; and, there is a division between District staff and staff of the CMOs. A District administrator coordinates schools' compliance with state and federal laws.

### **District Policies**

#### *Notice of Nondiscrimination*

The District's website currently has a notice of nondiscrimination on a Student Assessments page (<http://achievementschooldistrict.org/student-handbook/> - last accessed August 16, 2018)<sup>1</sup>, a "Join Our Team" page <http://achievementschooldistrict.org/join-our-team/> - last accessed August 16, 2018). The notice states that the District . . . does not discriminate on the basis of race, religion, creed, gender, gender identity, sexual orientation, national origin, color, age and/or disability in admission to, access to, or operation of its programs, services, or activities. The notice also states that the District does not discriminate in its employment or hiring practices. The Compliance Manager is listed as a contact at a stated email address and telephone number.

In addition, the District has a notice of nondiscrimination within the student handbook currently available on the District's website. That handbook, which is dated "2016-2017" on the cover page, includes the following statement:

The Achievement School District does not discriminate on the basis of sex, race, national origin, creed, age, marital status, or disability in its educational program, activities, or employment policies as required by Title VI and VII of the 1964 Civil Rights Act, Title IX of the 1972 Educational Amendments, Section 504 of the Federal Rehabilitation Act of 1973, and the Americans with Disabilities Act.

The statement refers individuals with inquiries, complaints, or grievances to the Office of the Superintendent, and provides the contact's address and telephone number.

(<http://achievementschooldistrict.org/wp-content/uploads/2016/10/2016-2017-ASD-Student-Handbook.pdf> (last accessed August 16, 2018))

#### *Analysis and Conclusion Regarding Notices of Nondiscrimination*

The District has published notices of nondiscrimination on the basis of sex as well as several other bases. One notice, included in two locations, directs interested persons to contact the Compliance Manager, who serves as the Title IX Coordinator. OCR confirmed that the Compliance Manager is the designated Title IX Coordinator. The notice does not include the

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<sup>1</sup> While the URL for the webpage refers to the student handbook, when that page was last accessed, it was captioned, "Student Assessments - 2014-15 ASD Required Assessments" and did not contain a student handbook.

Coordinator's physical office address or specify that inquiries concerning Title IX may be directed to the Assistant Secretary of the Office for Civil Rights. The second notice does not reference the employee who serves as the Title IX Coordinator, but instead directs individuals with inquiries to contact the Office of the Superintendent. Further, the second notice fails to specify that inquiries may also be directed to OCR. Based upon the preponderance of the evidence, OCR concludes that the District's notices of nondiscrimination are not in compliance with Title IX.

### ***Grievance Procedures and Harassment Policies***

#### *A. Current Policy and Procedures*

##### *General Harassment and Bullying Policy*

The District does not have a policy that specifically addresses sexual harassment. A general harassment and bullying policy is published in the "Student Welfare" section of its 2017-2018 Student Handbook.<sup>2</sup> The introduction to the policy provides in pertinent part, as follows:

##### *Student Harassment, Intimidation, Bullying or Cyberbullying.*

The Achievement School District supports and provides for an academic learning environment that is free from any type of harassment, bullying, intimidation or cyber-bullying. Harassment and bullying . . . means any act that substantially interferes with a student's educational benefits, opportunities or performance that takes place on school grounds, at any school-sponsored activity, on school-provided equipment or transportation at any official school bus stop that is directed specifically at a student or students and has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the educational environment or learning process. . .

The policy states that the referenced misconduct is prohibited and students who engage in it are subject to disciplinary action. It adds that each school has a protocol for reporting and handling harassment and bullying, and upon receipt of a report of such misconduct the Principal will investigate the allegations and "proceed with the appropriate course of action identified in the school's protocol." The policy ends with a statement of nondiscrimination on the basis of sex as well as other bases.

While the policy references a protocol at each School, the District's legal representative reported to OCR that schools do not have individual protocols and the School follows the District's policy.

##### *Parent and Community Grievance Resolution Process*

A separate section of the 2017-2018 Student Handbook states that each school has its own "parent and community grievance and escalation policies and procedures, which are available from the schools upon request." The Handbook encourages communication of

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<sup>2</sup> The same policy is also included in the 2017-2018 Student Handbook.

concerns or complaints directly with school leadership in accordance with school policies, and states that in most cases school grievance procedures will apply. While the Handbook adds that if parents or community members have a concern about any District school, they can also follow the process set out in the appendix of the Handbook, it also states that for most issues, the District cannot overturn decisions of charter schools concerning student services or staff.

The Handbook provides for an appeal to the Superintendent if an individual has a concern about a school's violation of the law and the concern has not been addressed satisfactorily through resolution efforts with the leadership of the school and either the Head of Schools or a charter school operator's designated grievance officer and board of directors. However, a flowchart located in the Appendix directs parents with "Title IX and discrimination claims," to contact the Superintendent's Office at the phone number provided in the chart; "within 2 school days the [District] will organize the people needed to get an answer" and provide an update regarding next steps; and within 5 school days the District will let the reporting party know the plan to address the problem if it is not already addressed. The chart does not advise that parents attempt to resolve the matter with the School before contacting the Superintendent's office.

#### *B. Policy and Procedures in Effect as of July 2014*

The District's 2014-2015 Student Handbook, which was in effect during the time frame relevant to the underlying complaint, included the "Student Harassment, Intimidation, Bullying or Cyberbullying" provisions discussed above. The 2014-2015 Handbook also included a Parent and Community Grievance Resolution section; however, it was not identical to the current handbook section. One difference is that appeals regarding concerns about violations of the law were directed to the District's Office of Portfolio Management, rather than the Superintendent's office. Also the chart outlining steps in the grievance process did not include "Title IX and Discrimination Claims" on the list of Critical Issues or indicate that a matter could be raised with the District prior to presenting it to the school.

#### *Analysis of Policies and Procedures*

The District's current harassment policy does not reference discrimination or harassment based on sex, and does not set out a detailed grievance process. It merely refers to school protocols and says that when there is a report of such misconduct the Principal will investigate and take action consistent with the school's protocol. However, according to the District's representatives, the local school protocols do not exist. The policy defines harassment or bullying as conduct that substantially interferes with a student's educational benefits, opportunities or performance. A hostile environment based on sex is created when conduct is sufficiently serious to interfere with or deny a student's ability to benefit from the educational program; it is not necessary for the conduct to reach the threshold of *substantial* interference with educational opportunities.

The District's grievance procedures provide notice to students, parents and the community about where complaints submitted to the District may be filed, but states that school protocols, which are not detailed in the District handbook or on the District website, will most likely apply. According to District counsel school protocols do not exist; thus, the procedures are misleading. The grievance procedures provide timeframes for the Office of the Superintendent to organize people to "get an answer," update the grievant, and advise the grievant of a plan for addressing the problem, but do not address time frames for completing an investigation, reaching a decision, or providing a remedy. Moreover, the policy does not: provide notice of where employees may file District level complaints; specify application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other students, or third parties; provide for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence; provide for notice to the complainant and the alleged perpetrator of the outcome of the complaint; or include an assurance that the school will take steps to prevent recurrence of any harassment and remedy any discriminatory effects on the complainant and others.

Finally, there is ambiguity in the grievance procedures in that, while the chart in the appendix states that an individual with a Title IX concern can present a matter to the District without first seeking resolution through the school, another policy section suggests that the District is to be contacted concerning violations of law only if the matter is not resolved by the school.

Based upon the preponderance of the evidence, OCR concludes that the District is in noncompliance with Title IX with regard to adoption and publication of grievance procedures.

On July 30, 2018, the District entered into the enclosed Agreement. The District has agreed to take the following steps: revise its anti-harassment statement, and sexual harassment policies and procedures; develop a system for tracking sexual harassment complaints; and provide staff training. When fully implemented, the Agreement entered into by the District will resolve the issues of noncompliance.

This letter is not intended, nor should it be construed, to cover any other issues regarding compliance with Title IX that may exist and are not discussed herein. 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR reminds the District that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or

discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

If you have any questions about this letter, please contact Phil Weltner, Senior Attorney, at (404) 974-9402, or me, at (404) 974-9356.

Sincerely

A handwritten signature in blue ink that reads "Wendy Gatlin". The signature is written in a cursive, flowing style.

Wendy Gatlin  
Compliance Team Leader

Enclosure  
Cc: Mr. Lee Danley