



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
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March 30, 2018

Mr. Jackie Pons, Superintendent
Leon County Schools
2757 West Pensacola Street
Tallahassee, Florida 32304

Re: Complaint #04-15-1473

Dear Mr. Pons:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint. The Complainant alleged that the Student was discriminated against on the basis of sex during the 2014-2015 school year. Specifically, she alleged that the Student was sexually harassed by another student on the school bus on April 27, 2015, and the School failed to conduct an adequate investigation. She also alleged that she reported other incidents of sexual harassment endured by the Student on the bus on April 28, 2015 and the School failed to adequately investigate those allegations of sexual harassment as well. Finally, she alleged the Student was subjected to teasing and harassment as a result of the incidents that took place on the bus.

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

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 noncompliance with or alleging any action which would be prohibited by Title IX. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed.

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 and this part not to discriminate in such a manner. The notice of

nondiscrimination shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein and admission thereto, and must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(b)).

The Title IX implementing regulation 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 which receives Federal financial assistance. The regulation implementing Title IX at 34 C.F.R. § 106.8(b) requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints under Title IX. OCR has identified a number of factors to consider in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: notice to students and employees of the procedure, including where complaints may be filed; application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and, an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Sexual harassment of students can constitute discrimination prohibited by Title IX and a recipient has a responsibility to respond to such harassment promptly and effectively. Harassing conduct creates a sexually hostile environment when it is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program.

In situations involving harassment by peers, a recipient is in violation of Title IX if it has notice of a sexually hostile environment and fails to take immediate and effective corrective action.

A recipient can receive notice of harassment in different ways. For example, a student or parent may have contacted appropriate personnel such as a principal, teacher or some other responsible employee. The recipient may also receive notice about harassment in an indirect manner. For purposes of compliance with the Title IX regulations, a recipient has a duty to respond to harassment incidents about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a reasonably diligent inquiry.

When responding to harassment, a recipient must take prompt 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. The specific steps in a recipient's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students' involved, the size and administrative structure of the recipient, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

OCR reviews the evidence under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the District failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

In reaching a compliance determination, OCR reviewed documents provided by the District and the Complainant pertaining to the issue of the complaint. OCR also conducted interviews with the Complainant, Student and three District staff persons.

Legal Issue

In this matter, OCR investigated whether the District failed to conduct a prompt and equitable investigation of the Complainant's allegation of sexual harassment against the Student thereby creating a sexually hostile environment in noncompliance with the Title IX implementing regulation at 34 C.F.R. §§ 106.8 and 106.31.

District's Policy and Procedures

The District's nondiscrimination statement covers all protected categories under statutes enforced by OCR and is published on its website and in the Student Code of Conduct and Student Handbook. The Title IX Coordinator's name and contact information is published on its website and in the Student Code of Conduct and Student Handbook. The District's sexual harassment policy and procedure 5517 "Anti-Harassment" and 5517.01 "Bullying and Harassment", in effect since 2012, are published on its website, and 5517.01 is included in various District publications including the Student Code of Conduct, the student planner, and employment handbook. OCR's review of the policies and procedures confirm that the procedures provide for notice to students and employees of the procedure, including where complaints may be filed; application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint, an opportunity for appeal of the decision by both parties; and, an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Background

At the time of the incident the Student was a 12 year old 7th grade student at Montford Middle School (School).

Facts

April 27, 2015 Incident

The Complainant alleged that the District failed to properly investigate an inappropriate touching of the Student by a male student on the bus on April 27, 2015. She stated that she believed the District's investigation consisted of asking the Student one question and no statements were taken from other students.

Based on the evidence obtained, the District first became aware of the April 27 bus incident (Incident 1) on May 1, 2015 when the Student informed District staff. According to witnesses interviewed by OCR and documentary evidence provided by the District, on May 1, 2015, the Student was in the cafeteria bathroom and a group of 8th grade girls were questioning her about Incident 1. The evidence shows that the girls were asking the Student why she allowed the male student to touch her. The Student left the bathroom and was seen outside crying and told to go to the office by a resource officer. The Student refused to talk with District staff but gave permission for staff to talk with her friend. The Student's friend relayed that the Student had allowed a male student to touch her on the bus and the other female students questioned her about it in the bathroom. A written statement was taken from the friend. The Student confirmed the friend's version of events including stating that the Student was not forced to do anything. The Student and her friend were asked a second time if the events as reported occurred and whether the Student was a willing participant and both responded in the affirmative. District staff also interviewed the male student who engaged in the touching and he admitted to the act and also stated it was consensual. The Complainant confirmed that the Student stated the touching was consensual but she felt more of an investigation should have taken place other than asking the Student two questions.

Later in the evening on May 1, 2015, the Complainant emailed District Staff and acknowledged the Student's actions but expressed it was due to peer pressure and that she did not agree with the discipline imposed on the Student. She expressed that she felt that counseling would have been more appropriate for the situation than a suspension. District staff met with the Complainant on May 4, 2015, and it was decided that the suspension would stand as both students had stated the act was consensual. During the May 4, 2015, contact with the District, the Complainant also reported that the male student involved in Incident 1 had previous discipline issues for sexual infractions and should not have been seated next to a female student on the bus. District staff looked into the Complainant's allegations regarding the male student's prior behavior and determined them to be false and the Complainant was advised accordingly.

On May 11, 2015, prior to the Student returning to school, the Complaint emailed District staff to express her concerns with the Student riding the bus. It was originally decided that the Student would be seated at the front of the bus near the bus driver, but the Complainant requested that she be placed on another bus. The Complainant and District staff met later that day and it was decided that the Student would be removed from bus 1028 (the bus the incident took place on) and placed on another bus. The Student was present at the meeting and was aware that she had been assigned to a different bus. However, at the end of the school day the Student got on bus 1028 and a physical altercation occurred. According to the Student, the girl

who instigated the fight was in her face and said, “why did you get my cousin in trouble.” The Student stated that the girl pushed her and a fight ensued. The Complainant and the Student admitted that they were aware the Student was not supposed to ride bus 1028. The Student stated she did not know why she got on the bus anyway. District staff became aware of the fight the next day and interviewed both students. The students did not provide written statements but the Student stated she informed District staff the reason for the fight was because she allegedly got the male student involved in Incident 1 in trouble. District staff stated they did not recall whether they were informed of the reason for the fight but did not recall the Student saying the fight was due to her being teased about Incident 1. Additionally, the District staff stated that the investigation determined that the Student was the aggressor. Both students were suspended for four days. The Student also informed OCR that male students continued to tease her about Incident 1 (male students staring at her and saying to her that “they can do it better”) but it lasted about a week and she did not report the teasing to District staff.

April 28, 2015 Incident

The Complainant in her interview with OCR alleged that she reported to the School that the Student had been inappropriately touched by four or five male students on the bus on April 28, 2015 (Incident 2). She believes that one of the male students involved was also involved in the April 27 incident. She alleges that the District’s investigation consisted of looking at a video and because the Student was allegedly laughing and smiling the District determined nothing had occurred.

As stated above, during a May 11, 2015 meeting, the Complainant informed District staff that she had recently learned that on April 28, 2015, three males approached the Student on the bus and tried to touch her inappropriately. According to District staff, the Student only named one male student allegedly involved in the April 28, 2015 incident (Incident 2). The named male student was not the same student that was disciplined for Incident 1. District staff on May 11, 2015, began its investigation of Incident 2 and requested the bus video for that day and questioned the named male student. According to District staff, it was clear from the questioning of the male student that the male student had no knowledge of the allegations. It was decided that a review of the video would take place before any further questioning would take place. District staff observed the bus video for the day in question. According to District staff, there were three male students, including the male student he had already interviewed, in and out of seats on the bus and each sat on the edge of the Student’s seat. All the students were laughing, playing and smiling and the video showed that only one of the three male students came close to making physical contact (not of a sexual nature) with the Student. The District did not interview this student because he is a Community Based Instruction student who has an IQ of 50 and the District believed he would not have been able to participate in an investigation. The District also chose not to interview the third male student because it did not appear he touched the Student. The District has no written documentation from the investigation. In an interview with the Student, she stated that the male students touched her on the leg and in her vagina area. She stated she did not report the incidents to anyone at the time of the alleged touching. OCR reviewed the video and noticed that the male students were in and out of the seat with the Student but was unable to determine whether any unwanted touching took place due to the height of the seats. Based on the review of the video and interview of the named male student, District

Staff determined that the allegation could not be substantiated and, therefore, the male students were not disciplined. District staff notified the Complainant via phone on May 13, 2015 about the outcome of the investigation. The Complainant confirmed that she did not view the video but was notified that the video did not substantiate the Student's allegations.

According to District staff, the Complainant reached out in June 2015 and wanted to discuss the incidents (Incident 1 and 2 and May 1st bathroom incident), to ensure no further problems for the Student and wanted information about the investigation of Incident 2. In response, District staff reached out to other staff members for more information and pulled the students files. There were no statements in the file and the Complainant was told that she could have the Student write a statement. District Staff stated the information was requested to ensure the School had names of students on file so that if there were issues the School could address them and make sure the students named in the Student's statement were not bothering her. The Complainant was made aware via email of the fact that there were no written statements in the file and no evidence of the Student alleging sexual harassment/teasing on May 1, 2015.

Analysis and Conclusion

As set forth in further detail above, when responding to harassment, a recipient must take prompt 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.

April 27, 2015 Incident

Although the Complainant alleged that the Student was sexually harassed on the bus on April 27 and the District failed to conduct an adequate investigation, the evidence shows that the alleged act was consensual. The District first became aware of Incident 1 through statements from the Student, her female friend and the male student involved. All students stated the act was consensual. On several occasions the Student admitted that she consented to the act and was not forced to do anything. The District investigated the incident as a consensual act that violated the District's Student Code of Conduct. A statement was taken from each student, their parents were notified and each student received discipline for violating the Student Code of Conduct. Therefore, the evidence is insufficient to conclude that the Student was subjected to sexual harassment and the District failed to conduct an adequate investigation.

With respect to the alleged teasing by the boys regarding the consensual touching on the bus, the evidence shows that the Student alleged that male students were staring at her and made the comment "they can do it better" but the District was not aware of the conduct as she did not report the behavior to District staff, there was no evidence that the District had notice from any other source, and the behavior lasted for one week. Additionally, the evidence does not support that the girls confronting the Student in the bathroom were harassing her. The female student's statement provides that the girls asked the Student about what happened on the bus and the Student stated that the girls were asking her why she did it. For conduct to create a hostile environment, the conduct must be sufficiently serious to limit or deny a student's ability to

participate in or benefit from the school's educational program. In this matter, the evidence does not support that the behavior was sufficiently serious. Likewise, with respect to the fight that occurred on May 11, 2015, the evidence is not sufficient to support that the incident amounted to harassment. The evidence shows that the School changed the Student's bus assignment close in time to its knowledge of the incident and the Student was notified of the change but chose to ride bus 1028 anyway. Allegedly a female student accused the Student of getting the male student from Incident 1 in trouble, pushed her and a fight ensued. The evidence is inconclusive regarding who was the aggressor with respect to the fight.

April 28, 2015 Incident

Based on the evidence, the Complainant reported to the District that the Student had been sexually harassed on the bus on April 28, 2015, by three male students. When the District was notified about the alleged unwanted touching that took place on April 28, the District promptly initiated an investigation, conducting interviews and reviewing video. However, the investigation was not complete.

Three male students were involved in the incident but the District only interviewed one of the male students. A second male student was not interviewed because, based on the video, it did not appear that this student made contact with the Student. According to the District, the only male student that appeared to make contact with the Student would have been incapable of participating in an investigation due to his IQ. The remaining male students were eyewitnesses to the alleged unwanted touching, but the District's failure to conduct an interview of the remaining male students prevented it from gathering all possible evidence to determine whether sexual harassment had occurred on the bus. Additionally, without trying to conduct an interview of the Student with the low IQ, the District cannot state with certainty that he could not provide any information about what took place on the bus. The District concluded that because the students were all laughing and smiling the Student was not subjected to any unwanted behavior was taking place. Without statements from the students involved regarding the nature of the interaction between the students, the District cannot with certainty determine whether the conduct was unwanted. Additionally, the District kept no record of the investigation.

OCR concludes that although the District's response to the allegations was prompt, the District did not conduct a complete investigation because the District failed to interview all parties with information relevant to the complaint allegations and failed to create a record of the investigation. Therefore, OCR has determined that based on the preponderance of the evidence the District is in noncompliance with Title IX with respect to this allegation.

To address the District's non-compliance, the District agreed to enter into a Resolution Agreement that requires the District to take the following corrective actions: The District will ensure that the School is aware of and follows its sexual harassment policy and procedures "5517 Anti-Harassment," which requires that a written record of its sexual harassment investigations be kept and that both parties will be notified about the investigative findings, an assurance that the District will maintain the complete investigative file in compliance with established District or State record retention requirements, and the District will provide annual training for all faculty and staff responsible for investigating complaints of sexual harassment under Title IX. The

District will also offer counseling to the Student. OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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 file a private suit in federal court whether or not OCR finds a violation.

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 Complainant may file another complaint alleging such treatment.

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.

This concludes OCR's consideration of this complaint. If you have any questions about this letter, please contact Vicki Lewis, Senior Attorney at 404-974-9332 or Arthur Manigault, Esq., Compliance Team leader at 404-974-9376.

Sincerely,

Melanie Velez
Regional Director

Enclosure