



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

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ATLANTA, GA 30303-8927

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September 6, 2018

Ms. Barbara Jenkins, Superintendent
Orange County School District
Ronald Blocker Educational Leadership Center
445 W. Amelia Street
Orlando, FL 32801

RE: OCR Complaint No. 04-16-1179
Resolution Letter

Dear Ms. Jenkins:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on January 20, 2016 against Orange County School District (the District). The Complainant alleged that the Student was discriminated against on the basis of sex by subjecting her to a hostile environment. Specifically, the Complainant alleged that the District failed to promptly and equitably respond to the Student's report of sexual assault in XXXX.

Based on the allegation, OCR investigated whether the District's failure to provide a prompt and equitable response allowed the Student to be subjected to a sexually hostile environment (that denied or limited the student's ability to participate in or benefit from the school's program), in noncompliance with the Title IX implementing regulation at 34 C.F.R. §§ 106.8 and 106.31.¹

As a recipient of Federal financial assistance from the Department, the District is subject to 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. Accordingly, OCR has jurisdiction to investigate this complaint. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Legal Standards

Sexual Harassment

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment

¹ OCR notes that an additional legal issue was opened in this investigation. However, after OCR notified the complainant and recipient that it had received this complaint, OCR revised the scope of its investigation. The additional legal issue stated, "Whether the District provided prompt and equitable response(s) to sexual harassment complaints, reports and other incidents of which it had notice (knew about or should have known about), in noncompliance with the Title IX implementing regulation at 34 C.F.R. §§ 106.8, 106.31."

can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual assault and sexual violence.

Sexual harassment of a student by a teacher or other recipient employee violates Title IX, and the recipient is responsible for discrimination in these cases. First, sexual harassment may occur when an employee is acting (or who reasonably appears to be acting) in the context of carrying out the employee's day-to-day responsibilities (such as teaching, counseling, supervising and advising), and the recipient is responsible whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students. Second, sexual harassment may occur in cases where an employee, although taking place in a school's program, occurs outside of the context of the employee's provision of aid, benefits, and services to students. In these latter cases, the school's responsibilities are not triggered until the school knew or should have known about the harassment. Nevertheless, in both cases, the recipient is responsible for remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of sexual harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject individuals to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures.

Notice of non-discrimination and designation of Title IX Coordinator

The Title IX implementing regulation at 34 C.F.R. §106.8(a) requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Title IX regulation, including any investigation of any complaint communicated to such recipient alleging its noncompliance or alleging any actions that would be prohibited by the Title IX regulation. The recipient must notify all its students and employees of the name or title, office address and telephone number of the appointed employee or employees. The Title IX coordinator must have knowledge of the requirements of Title IX, of the recipient's own policies

and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the recipient.

The Title IX implementing regulation at 34 C.F.R. § 106.9 requires that each recipient publish a statement (notice) that it does not discriminate on the basis of sex in its education programs or activities. The notice must state, at a minimum, that the recipient does not discriminate on the basis of sex in its education program or activity, including in admission to or employment in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice should indicate that inquiries concerning Title IX may be referred to the Title IX coordinator or to OCR. The Title IX regulation at 34 C.F.R. § 106.9(b) requires that the notice of nondiscrimination be displayed prominently in each announcement, bulletin, catalog, or application form used in connection with its education program and activity and in recruitment of students or employees and it should include the name, office address, and telephone number for the designated Title IX coordinator.

Grievance Procedures

The Title IX implementing regulation at 34 C.F.R. § 106.8(b) requires a recipient 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. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR reviews all aspects of a recipient's policies and practices, including whether the procedures provide for:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the grievance procedures to complaints filed by students or on their behalf alleging sex discrimination, including sexual harassment, carried out by employees, other student, or third parties;
3. provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. notice to the parties of the outcome of the complaint; and,
6. assurance that the school will take steps to prevent recurrence of any sexual harassment and remedy discriminatory effects on the complainant and others, if appropriate.

Summary of Investigation

As part of OCR's investigation to date, OCR interviewed the Complainant and reviewed documents produced by the Complainant and the District, as well as the District's policies and procedures available online². Specifically, OCR reviewed the District's Notice of

² OCR reviewed the District's most recent designation of Title IX Coordinator, Notice of Nondiscrimination, and Title IX grievance procedures, which was last revised on May 23, 2017. Available at

Nondiscrimination, as contained in the District’s *Nondiscrimination/Respect for the Individual* policy, available on the District’s website; the District’s *Title IX Sex Discrimination Grievance /Complaint Procedures*; the District’s internal reporting, relevant to the underlying incident; Student and District staff statements related to the underlying incident; and the District letter issued to the Complainant related to the underlying incident. OCR identified several areas of the District’s policies and grievance procedures that require revision to ensure that reports of sexual harassment are appropriately addressed.

Conclusion

To remedy the allegations raised by OCR’s complaint, the District agreed to implement the provisions of the enclosed Resolution Agreement, which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Resolution Agreement, the District will (1) offer counseling to the Student to remedy the effects of any hostile environment created by the District’s failure to appropriately respond to a report of sexual harassment; (2) revise its notice of nondiscrimination, as contained in the District’s *Nondiscrimination/Respect for the Individual* policy, and its grievance procedures applicable to complaints of discrimination on the basis of sex, as contained in District’s *Title IX Sex Discrimination Grievance /Complaint Procedures*; and (3) provide training to staff on the revised notice of nondiscrimination and grievance procedures under Action Item 2, the Title IX and legal standards prohibiting discrimination on the basis of sex, including harassment based on sex, and training to the Title IX Coordinator and staff responsible for investigations.

The Resolution Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Title IX. OCR will monitor the District’s implementation of the Agreement to ensure that it is fully implemented. 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 the 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.

[https://www.ocps.net/UserFiles/Servers/Server_54619/File/School%20Board/Policies/JB%20Equal%20Educational%20Opportunities%20\(5-23-17\).pdf](https://www.ocps.net/UserFiles/Servers/Server_54619/File/School%20Board/Policies/JB%20Equal%20Educational%20Opportunities%20(5-23-17).pdf) (last accessed by OCR on June 4, 2018). OCR notes that the District originally submitted a prior version of the District’s designation of Title IX Coordinator, Notice of Nondiscrimination, and Title IX grievance procedures that is no longer in effect.

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 Lorraine Irier, the OCR attorney assigned to this complaint, at 404-974-9349 or lorraine.rier@ed.gov, or Team Leader, Arthur Manigault, at (404) 974-9376.

Sincerely,

Melanie Velez
Regional Director

Enclosure

cc: Palmerini, John C. <John.Palmerini@ocps.net>