



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

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REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

June 19, 2018

Matt Massey, Superintendent  
Madison County Schools  
1275 Jordan Road  
Huntsville, Alabama 35811

OCR Complaint #04-16-7070

Dear Superintendent Massey:

The U.S. Department of Education Office for Civil Rights (OCR) has completed its investigation of the above referenced complaint filed against the Madison County Schools (District). The Complainant alleged that the Student was subjected to sexually explicit comments and unwanted touching on the school bus and at the Buckhorn High School (School) by the same three male students in August and September 2016. The incidents were reported by the Complainant to School administrators but the School failed to stop the conduct or punish the students engaging in the conduct. The Complainant also alleged the School does not have a Title IX Coordinator or grievance procedures.

The complaint was investigated pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 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 receiving Federal financial assistance. The District is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to investigate this matter.

OCR investigated the following issues:

1. Whether the District failed to designate as least one employee to coordinate its efforts to comply with Title IX and adopt and publish grievance procedures in noncompliance with Title IX and its implementing regulation at 34 C.F.R. §106.8 (a) and (b).
2. Whether the District failed to provide prompt and equitable response(s) upon receipt of notice that the Student may have been subjected to sexual harassment, 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 34 C.F.R. §§ 106.8, and 106.31.

## **Legal Standards**

The Title IX implementing regulation at 34 C.F.R. § 106.8(a) and (b) 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 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. For

example, in some situations the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment -- if the harassment is widespread, openly practiced or well-known to students and staff, such as sexual harassment occurring in hallways, graffiti in public areas or harassment occurring at recess under a teacher's supervision.

When responding to harassment, a recipient must take prompt and appropriate action 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.

A recipient should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the recipient's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any instances of retaliation.

In some instances a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Legal standards for criminal investigations are different; thus, police investigations or reports may not be determinative of whether harassment under Title IX has occurred and do not relieve the school of its duty to respond promptly and effectively.

OCR reviews 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.

OCR reviewed documents provided by the District and the Complainant pertaining to the issues of the complaint. The documents included written statements, complaints, the District's policy and procedures, the District's investigative file, witness statements and email correspondence, among other documents. OCR interviewed the Complainant, the Student, and her witness and six District staff persons.

## **Background**

At the time of the complaint the Student was in the 11<sup>th</sup> grade. The Student is now in her 12<sup>th</sup> grade year at the School.

## **Legal Issue One**

Whether the District failed to designate as least one employee to coordinate its efforts to comply with Title IX and adopt and publish grievance procedures in noncompliance with the Title IX implementing regulation at 34 C.F.R. §106.8 (a) and (b).

### **Findings of Fact**

#### *Title IX Coordinator*

The Complainant alleged that the School does not have a Title IX Coordinator or grievance procedures.

The District provided OCR with documentation showing that the District does have a Title IX Coordinator. The Coordinator's name and contact information is published in the Student Code of Conduct on page 34. The information includes the name, address, telephone and fax numbers and email address.

#### *Grievance Procedures*

The District also has a sexual harassment policy and procedures for the filing of sexual harassment complaint and a sexual harassment policy. The policy is section 6.11 titled "Student Sexual Harassment." The policy applies to students, staff and third parties. The procedures are published on the District's website.<sup>1</sup> The policy and procedures include a definition of sexual harassment that covers sexual violence and contains the following: a statement that when the District receives a complaint of sexual harassment the principal or designee will investigate the complaint within 10 days and that a written outcome will be provided to the complainant and the parents or legal guardians within 20 days; therefore the procedures include reasonable timeframes for the major parts of the investigation. The procedures also include a prohibition against retaliation, a statement regarding maintaining the confidentiality of the complainant as long as it does not interfere with ability investigate the complaint, a statement that the District will take steps to remedy the effects of and prevent the reoccurrence of harassment, and if a violation of the policy occurs appropriate disciplinary sanctions will be imposed in accordance with Title IX Board policy guidelines that prohibit discrimination on basis of sex. However, part of the definition of harassment states that the "conduct has the purpose and effect of unreasonably interfering with the student's academic performance ...." In addition, the policy and procedures state that complaints can only be filed in writing using the Board approved complaint form and must be mailed or personally delivered to the principal. The procedures do not state that an impartial investigation of complaints, including the opportunity to present witnesses and other evidence will be conducted; and only provides for a written outcome to the complainant and his/her parents or legal guardians, but not the student who is the respondent and his/her parents..

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<sup>1</sup> [http://www.mcsc12.org/apps/pages/index.jsp?uREC\\_ID=388192&type=d&pREC\\_ID=881185](http://www.mcsc12.org/apps/pages/index.jsp?uREC_ID=388192&type=d&pREC_ID=881185) (See Section 6.11 Student Sexual Harassment) (last visited Feb. 23, 2018).

## **Analysis and Conclusion**

OCR concludes that the District has a Title IX Coordinator and grievance procedures. However, the procedures require that the conduct have the purpose and effect of unreasonably interfering with a student's access to the educational program and thereby impart a higher standard than OCR's requirement that the conduct be sufficiently serious to interfere with the student's access to the educational program. Also, the procedures require a complaint to be filed in writing on a Board approved complaint form and mailed or hand delivered to the principal and, do not provide for an impartial investigation including the opportunity to present witnesses and only requires notification of the outcome of the investigation to the complainant. The District must allow complaints of sexual harassment to be made orally and in any written format to any staff or employee of the School and/or District. During an investigation of sexual harassment, the complainant and the respondent should be treated equitably. Therefore, the procedures must also afford the complainant and respondent the opportunity to present witnesses and other evidence. Finally, the procedures must provide for both the complainant and the accused to be notified of the outcome of the investigation in writing.

Based on the above, OCR has determined that although the District has sexual harassment procedures, they are not in compliance with OCR requirements and therefore the District is not in compliance with Title IX and its implementing regulation with respect to this issue.

## **Legal Issue Two**

Whether the District failed to provide prompt and equitable response(s) upon receipt of notice that the Student may have been subjected to sexual harassment, 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 the Title IX and its implementing regulation at 34 C.F.R. §§ 106.8, and 106.31.

The complaint alleged that the Student was subjected to sexually explicit comments and unwanted touching on the bus and at the School by the same three male students in August and September 2016. The incidents were reported but the School failed to stop the conduct or punish the students engaging in the conduct.

## **Findings of Fact**

The preponderance of the evidence shows that on August 23, 2016, the Student reported to her history teacher (Teacher) that Student 1 and Student 2 were making comments about her "butt" and she had asked Student 1 and Student 2 to stop. The Teacher reported the conduct to Assistant Principal 2 and Guidance Counselor 2. Assistant Principal 1 and Assistant Principal 2 began an investigation into the conduct on August 24, 2016. A statement was taken from the Student, Student 1 and Student 2 and a third student witness. Based on the witness statements, Student 1 and Student 2 denied making any comments and the third student witness corroborated that Student 1 and Student 2 were making comments about the Student's butt. The School's investigation concluded that the evidence, comprised of the student witness statements, was not sufficient to conclude that the Student had been subjected to sexual harassment; however,

Student 1 and Student 2 were given a verbal reprimand by Assistant Principal 1 about inappropriate language and the School Resource Officer (SRO) also warned them of possible criminal implications of inappropriate language.

On September 1, 2016, the Student was waiting to board the bus from the School to the Technical Center when Student 3 asked the Student to “go to the back of the bus to \*uck.” The Student left the bus and reported the incident to Guidance Counselor 1 and 2. The Guidance Counselors did not report the information to the administration at that time but Guidance Counselor 1 did report the incident later that day or the next day. The Student returned to the bus without incident on that day. The next day, September 2, 2016, Student 3 again asked the Student to go to the back of the bus to \*uck and also pushed up against the Student near her breast. The bus driver witnessed the incident and called for Assistant Principal 1, who was made aware of the incident. The Student reported the incident to the Technical Center’s Principal and her father was also called to the office. Because the incident did not occur at the Technical Center, the Technical Center’s Principal did not conduct an investigation but did tell the Student and father that they could fill out a sexual harassment form. The father took the Student back to the School and reported the incidents to Assistant Principal 1 and the SRO. Per the SRO offense report, the Student provided information about both the September 1<sup>st</sup> and 2<sup>nd</sup> incidents and that Assistant Principal 1 spoke with Student 3 and instructed him to leave the Student alone. There is no evidence the School conducted an investigation of the incidents to determine whether the Student had been subjected to sexual harassment.

On September 7, 2016, while in the Teacher’s class, Student 1 and Student 2 bumped the Student and called her a \*itch. Student 2 also called her a snitch. The Student reported the incident to the Teacher and the Teacher addressed it in the class by making the students apologize. The Complainant informed Guidance Counselor 2 and Assistant Principal 1 of the incident via email and requested a class change for the Student. The Student was then moved to a different class. An offense report regarding this incident was also filed with the SRO. On September 8, 2016, a meeting took place with the Principal, Student and her parents to discuss the students’ behavior towards the Student. The incidents were discussed and the father expressed that he wanted it to stop and something done about the students. The Principal did not conduct an investigation but had Student 1, Student 2 and Student 3 sign a written reprimand which stated the following:

“This written reprimand is to serve as a caution that should you harass, intimidate, or threaten [Student] in any way from this point forward that you will be subject to discipline to include suspension from school as well as the possibility of recommendation for a system-level discipline hearing and legal action. You are receiving this warning in an effort to stop your harassing communications with [Student] and to prevent the need for disciplinary action against you.”

The Student’s father was provided with a copy of the written reprimand. The Student stopped riding the bus and began driving to the Technical Center to get away from the students.

On September 21, 2016, the Student reported to Guidance Counselor 1 and Assistant Principal 2 that she had been told that Student 3 was saying inappropriate things about her, saying she was lying about being harassed and that he was asking students to sign a form about her. The Student

also provided names of students who saw the form. Assistant Principal 2 did not talk with Student 3 or the students who saw the form. The School did not conduct an investigation into the incident because they felt it was hearsay and there was not much to go on.

### **Analysis and Conclusion**

#### *Notice of Peer Harassment*

A recipient is responsible for addressing peer harassment incidents about which it knows or reasonably should have known. Based on the evidence, the District was on notice as early as August 23, 2016, that the Student was being subjected to harassing conduct by Student 1 and Student 2; the Student reported the harassment to the Teacher, who in turn reported it to a School administrator. On September 1 and 2, 2016 the District received notice of harassing conduct by Student 3 because the Student reported Student 3's conduct to District employees and at least one District employee (bus driver) witnessed the conduct. Also, the District had notice that the Student was subjected to retaliation by Students 1 and 2, when she reported the September 7, 2016, classroom incident to her teacher, Guidance Counselor and Assistant Principal. Finally, on September 21, 2016, the Student provided the District notice of ongoing harassment or retaliation, in that Student 3 was reportedly accusing the Student of lying about being harassed and encouraging students to sign a form about her.

#### *District's Response*

The District investigated the allegations from the August 23<sup>rd</sup> incident involving Students 1 and 2 but found insufficient evidence of sexual harassment even though a student witness corroborated the Student's allegations of unwanted comments of a sexual nature. Even though Student 1 and Student 2 were not found to have violated the District's sexual harassment policy, the two students were given a verbal warning regarding inappropriate comments.

The administration failed to conduct an investigation into the reports of harassment by Student 3 but merely gave Student 3 a verbal warning to leave the Student alone. The District asserts that because the Student's father had filed a complaint with the SRO and stated that he wanted something done criminally, they did not do an investigation and did not have access to the SRO's report. As noted in the legal standards above, regardless of possible law enforcement involvement the District's responsibility remained and it failed to respond to allegations of sexual harassment of which it had knowledge. The District also failed to investigate the report that Student 3 was making inappropriate comments about the Student, accusing her of lying and encouraging other students to sign a form about the Student.

Further, the District failed to take steps to stop further harassment and prevent retaliation against the Student. As stated above all three male students had been instructed verbally to leave the Student alone but no further sanctions were imposed. The verbal warning was not sufficient as the Student was again subjected to possible sexually harassment when on September 7, 2016, she was called a \*itch and bumped by Students 1 and 2, and also subjected to retaliation when she was called a snitch by the Student 2 for having reported the prior behavior. After the September 7, 2016, incident the male students received a written reprimand for engaging in harassment.

Even after this reprimand, at least one of the students continued to engage in harassment and/or retaliation toward the Student when he tried to discredit the Student's account of alleged sexual harassment and have other students sign a form against her. As a result of the District's failure to effectively address the alleged acts of harassment, the Complainant requested that the Student be removed from her History class and the request was granted. Also, the Student stopped riding the bus and began driving to the Technical Center to escape the harassment.

Therefore, based on the preponderance of the evidence, OCR finds that the District failed to provide prompt and equitable response(s) to sexual harassment complaints, reports and other incidents of which it had notice, thereby allowing the Student to continue to be subjected to a hostile environment in noncompliance with Title IX and its implementing regulation with respect to this issue.

### **Conclusion**

The District entered into the enclosed Agreement, which when fully implemented, will resolve the issues in this complaint. 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 concludes OCR's investigation of the complaint and 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 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 me at 404-974-9376.

Sincerely,

Arthur Manigault  
Compliance Team Leader

Enclosure