



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

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

REGION IV
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March 15, 2019

Dr. Mark Mullins
Superintendent
Brevard County Schools
2700 Judge Fran Jamieson Way
Viera, FL 32940

Re: OCR Complaint No. 04-18-1361
Letter of Resolution

Dear Dr. Mullins:

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has concluded its investigation of the complaint we received on March 19, 2018 against the Brevard County School District (District), alleging discrimination on the basis of sex. Specifically, the Complainant alleged that the District failed to provide a prompt and equitable response to peer harassment of his son (Student), a former student of Central Middle School (School), on the basis of sex. Complainant alleged that beginning in November 2017, a male student (Student 1) sexually harassed the Student on a daily basis. Student 1's alleged conduct included asking if the Student and a male friend were going to get married and "go in the bathroom and masturbate each other" as well as regularly calling the Student "gay" and "transgender" although the Student is not gay or transgender, and getting Student 1's friends to laugh at the Student during the name-calling incidents. Complainant alleged further that the Student reported Student 1's conduct to a teacher as well as in an incident report submitted to the School, and the District did not provide an appropriate response. Finally, the Complainant reported to OCR that District personnel, including the School's Dean, told him that they did not know the identity of the District's Title IX Coordinator.

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

OCR investigated whether the District failed to provide a prompt and equitable response to harassment of the Student on the basis of sex, in noncompliance with Title IX and its implementing regulation at 34 C.F.R. §§ 106.8 and 106.31.

To date, OCR has reviewed and analyzed documents submitted by the Complainant and the District, including the District's Notice of Nondiscrimination, as contained in the District's Code of Student Conduct (Code); the District's grievance procedures, as contained in the Code; Board policies 2260.01, 5517 and 5517.01; a Student Reporting Form completed by the Student; a student withdrawal form completed by the Complainant; the Incident Investigation Form completed by the School's Dean; written statements from the Student, the accused, a teacher, and two additional student witnesses; and, written notification to the Complainant and the parents of the accused regarding the outcome of the Dean's investigation.

The District entered into an agreement to resolve the complaint prior to the completion of OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Set forth below are a summary of the facts and the 302 resolution of the complaint.

Legal Standards

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 implementing regulation at 34 C.F.R. § 106.9 requires that each recipient notify applicants for admission and employment, students and parents of elementary and secondary school students and employees, among others, that it does not discriminate on the basis of sex in its education programs or activities and that it is required by Title IX not to discriminate in such a manner. The notice must state, at least, that the requirement not to discriminate in the education program or activity extends to employment therein and admission thereto unless Subpart C of the regulation does not apply and that inquiries concerning Title IX may be referred to the Title IX coordinator or to OCR.

The Title IX implementing regulation at 34 C.F.R. § 106.8(b) requires a recipient to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation.

Sexual harassment based on sex or sex stereotyping that creates a hostile environment is a form of sex discrimination prohibited by Title IX.

Facts

Title IX Coordinator

The District has designated its Assistant Superintendent, Division of Equity, Innovation and Choice (Assistant Superintendent), to serve as the District's Title IX Coordinator. The Code

includes a notification that the Assistant Superintendent is the “equity coordinator” for Title IX and other areas, and provides her name, title, office address and telephone number.

Notice of Nondiscrimination

The District has a notice of nondiscrimination on pages iii and 82 of the Code. Both notices state that the District does not discriminate on the basis of sex and is in compliance with Title IX. The notice on page 82 of the Code provides that it applies to all educational programs, activities, or employment practices/procedures of the District, while the notice on page iii of the Code does not provide that information. Both notices provide that inquiries regarding discrimination or harassment can be sent to the Assistant Superintendent; however, neither publication states that inquiries concerning Title IX may be referred to OCR.

Grievance Procedures¹

The Code includes a section captioned, “Nondiscrimination Policy and Grievance Procedures.” However, the section does not set out a grievance procedure and instead refers the reader to Board Policy 2260.01 and Board Policy 5517. A Code section captioned, “Student Grievance Procedure,” specifies that the word “grievance” relates to alleged violations of Title IX and refers the reader to Board Policy 2260.01.

Board Policy 2260.01 states that it applies to alleged violations of Title IX by schools and school representatives or employees only and provides three steps for pursuing a grievance. Board Policy 2260.01 references an investigation and requires notice of the outcome to the aggrieved student and parent or guardian but makes no reference to providing such notice to an accused individual. Further, Policy 2260.01 does not discuss any remedies or corrective actions that may be taken to address a violation.

Board Policy 5517, specifically applicable to students’ harassment of other students, staff or third parties, references Title IX, prohibits sexual and other forms of harassment, states that an investigation will be conducted, and provides that grievances may be filed according to the procedures established in the District’s “Student Harassment Complaints and Grievance Procedures.” Policy 5517 does not specify where the “Student Harassment Complaints and Grievance Procedures” are published.² Finally, Policy 5517 does not reference remedies for students subjected to harassment.

Board Policy 5517.01, specifically applicable to bullying and harassment, can be used by students and parents to report harassment and provides that all complaints will be investigated promptly by an individual trained in investigative procedures, who will collect and evaluate a variety of facts. Policy 5517.01 includes a variety of standards used to determine whether the alleged acts constitute harassment, including whether the acts *substantially interfere* with or limit the victim’s ability to participate in or benefit from the program or *unreasonably interfere* with

¹ In light of the Complainant’s allegations, OCR’s investigation included a review of District procedures applicable to student complaints alleging actions prohibited by Title IX and its implementing regulation.

² The District did not provide these procedures in response to OCR’s data request. OCR searched the District’s website and did not locate these procedures.

the individual's school performance or participation; however, the harassment definition makes no reference to hostile environment. Policy 5517.01 includes details about the investigation process; however, the policy does not state that both parties receive notice of the outcome of an investigation. Finally, with respect to sexual harassment complaints the policy appears to refer the reader back to Policy 5517, which lacks a detailed investigation process for conduct that may have created a hostile environment based on sex. In addition, while Policy 5517.01 discusses possible consequences and remedial action for students, employees, visitors and volunteers who engage in harassment or bullying, it does not discuss remedies for students who have been subjected to harassment.

Response to Internal Reports of Harassment of the Student

The Student was enrolled in the seventh grade at the School during a portion of the 2017-2018 school year. On January 24, 2018, the Student submitted to the School a District form for reporting "student-related" sexual harassment and other forms of harassment as well as other incidents. The Student reported that on multiple occasions Student 1 called the Student "gay" and "transgender"; said that the Student and a male friend "looooved" [sic] each other; and, created an environment in which the Student wanted to change classes, and reached a point where he dumped a smoothie on Student 1's head and wanted to leave school. That same day, the Complainant met with the School's Dean, requested the identity of the District's Title IX Coordinator, and withdrew the Student from the District. The Complainant stated on a student withdrawal form that the Student had been subjected to "ongoing and pervasive bullying and sexual harassment" by Student 1.

Upon learning of the Student's allegations regarding Student 1, the School's Dean conducted an internal investigation which substantiated that Student 1 engaged in name calling of the Student, and also provided evidence that the Student engaged in similar conduct. The Dean concluded that while Student 1 engaged in inappropriate conduct, the conduct did not rise to the level of harassment, applying the standards found in Board Policy 5517.01 and Florida Statute 1006.147. The Dean's summary, which was included in the investigative file related to the complaint, did not address whether the conduct created a hostile environment based on sex. In a letter dated March 20, 2018 the School's Principal provided the parents of the Student and Student 1 notice of the outcome of the investigation.

Conclusion

Prior to OCR's completion of the investigation, the District expressed an interest in resolving this allegation under Section 302 of the CPM and OCR determined that it would be appropriate to resolve this allegation under Section 302 because OCR's investigation had identified issues that could be addressed through a resolution agreement. The District signed the enclosed Resolution Agreement that, when fully implemented, will resolve the complaint. The Agreement requires the District to assess the totality of the facts collected pursuant to its internal investigation into the Complainant's internal complaint of sex harassment and determine whether the conduct substantiated by the investigation includes conduct based on sex, including sex stereotyping, that created a hostile environment. The District also agreed to revise its notice of nondiscrimination. Further, the District will evaluate its policies applicable to student

complaints, and how the policies cross reference each other, and revise the policies, if necessary, to ensure that the District has provided understandable notice of how the various policies interact and apply, and has adopted and published procedures that provide for the prompt and equitable resolution of student and parent complaints alleging actions prohibited by Title IX. Finally, the District agreed to provide training to the District's Title IX Coordinator and staff responsible for Title IX investigations on any revised policies and take steps to ensure that all employees at the School have been provided the name and contact information for the District's Title IX Coordinator(s).

This concludes OCR's investigation of the 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 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.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions about this complaint, please contact Claudia Campo, Attorney, at 404-974-9378, or Arthur Manigault, Compliance Team Leader, at 404-974-9376.

Sincerely,

/s/

Melanie Velez
Regional Director

Enclosure