



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

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ATLANTA, GA 30303-8927

REGION IV

ALABAMA
FLORIDA
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March 6, 2020

XXXXXXXXXX

Superintendent

Cobb County School District

XXXXXXXXXX

XXXXXX, GA XXXX

Re: OCR Complaint #04-19-1553

Dear XXXXXXXX:

On August 28, 2019 the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Cobb County School District (District) alleging discrimination on the basis of sex. The Complainants¹ filed this complaint on behalf of their daughter (Student). The Student is currently attending XXXXXXXX (School) within the District and was in the XXXXXXXX during the 2018-2019 school year.

Specifically, the Complainants alleged that on XXXXXXXX, 2019 a male student (Schoolmate 1) subjected the Student, who is a student with a disability and receives special transportation as a related service, to sexual harassment and sexual assault on the school bus.² The Complainants alleged further that District staff did not provide the Complainants notice of the incident for several hours, after several adults had questioned the Student outside the presence of the Complainants or an advocate. In addition, the Complainants alleged that they learned from local police that video footage from the Student's bus shows that prior to the XXXXXXXX 2019 incident Schoolmate 1 and a second male student (Schoolmate 2) exposed themselves to the Student on several instances across multiple days.

The Complainants and Attorney reported the alleged additional incidents to the District. According to the Complainants and the Attorney, the District told them that Schoolmate 1 would no longer ride the bus with the Student and was transferred to a different school, but did not provide information about Schoolmate 1's actions toward the Student aside from a statement that the interaction lasted 15 minutes. Also, the Complainants and Attorney alleged that in response to the concerns about Schoolmate 2, the District stated only that it would assign a monitor to ride the Student's bus, and did not respond to their inquiries about whether Schoolmate 2 continued to ride the bus with the Student. In addition, the OCR complaint alleged that the Attorney was

¹ The original named complainant was the former attorney of the Student's parents (Attorney). However, the Student's parents have asked to be substituted as the named Complainants in this complaint because the Attorney is no longer representing them or their interests.

² District records show that the Student has been identified as a student with a disability XXXXXXXX.

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not able to identify the District's Title IX Coordinator when she was attempting to address the sexual harassment incidents.

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 by recipients of Federal financial assistance (FFA) from the Department. As a recipient of FFA from the Department, the District is subject to these laws.

Based on the Complainants' allegations, OCR initiated an investigation into whether the District failed to respond promptly and equitably to reports of sexual harassment of the Student on her school bus, in noncompliance with Title IX and its implementing regulation at 34 C.F.R. §§ 106.31 and 106.8.

To date, OCR has reviewed and analyzed documents submitted by the Complainant and the District, including: the District's sexual harassment procedures, spring 2019 Individualized Education Program (IEP) meeting notes regarding the Student, the District's investigation file and notes, safety plans, an internal grievance, a police report, and emails and other correspondence provided by the Complainants and the District. OCR also interviewed the Complainants, the Attorney, the District's Compliance and Legislative Affairs Officer (CLAO), the School's Principal, and the District's Title IX Coordinator.

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

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, 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 Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX, or alleging any actions which would be prohibited by Title IX. *See* 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients 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. *See* 34 C.F.R. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR will evaluate a recipient's good faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms.

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

Under Title IX, a school has a responsibility to respond promptly and effectively to notice of sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

Summary of Investigation to Date

Title IX Coordinator

The District's 2018-2019 Family Information Guide (Guide) designated the District's Director of Student Support as the District's responsible official for handling issues related to Title IX. The Guide provided a phone number and physical address for the Director of Student Support. The current Guide contains the same designation and information as the 2018-2019 Guide.³

Title IX Grievance Procedures

The District has a separate policy covering sexual harassment reports and investigations, Policy JCAC-R. This policy, last revised in July 2013 and still in effect as of March 2019, provides that students should immediately report sexual harassment to the principal or designee and may also submit a report to the Title IX Coordinator. The policy states further that if a student reports sexual harassment to a teacher or staff member, the teacher or staff member should notify the principal or designee. The investigation procedure outlined in the policy includes interviews of the parties and witnesses, a review of relevant documents and an opportunity for the parties to identify witnesses and provide evidence. One provision of the policy states that the principal or designee will conduct an investigation within 10 school days of receipt of a complaint; another provision states that the investigation should be completed within 15 school days of initiation of the investigation. The policy requires a post-investigation report setting out the findings and the evidence in support of the findings as well as notice to the parties concerning the result of the investigation. The policy provides that if there is a determination that the charging party was subjected to sexual harassment the District will impose discipline or take other action to ensure that the harasser does not engage in further acts of sexual harassment.⁴

³ <http://www.cobbk12.org/generalinfo/FamilyInformationGuide/FamilyInformationGuide2019-2020.pdf> pg. 26 (Last accessed by OCR on 1/28/2020)

⁴ <http://www.cobbk12.org/centraloffice/adminrules/j/JCAC-R.pdf> pg. 2-3 (last accessed 1/28/2020)

Response to Reports Regarding Possible Sexual Harassment

During the 2018-2019 school year the Student was a XXXXX at the School. She has been identified as a student with a disability XXXXXXXX, and receives transportation as a related service.

On XXXXX, 2019, after she got off the school bus in the morning, the Student notified a District paraprofessional that Schoolmate 1 put his hand down her pants and touched her private parts while on the bus. The paraprofessional took the Student to the Assistant Principal's office. The Assistant Principal notified the Principal and interviewed the Student.⁵

On the same day, the parent and grandparent of another student who rode the same bus as the Student (Schoolmate 3) notified the School that Schoolmate 1 forced Schoolmate 3 to show Schoolmate 3's private parts while they were on the bus. The Principal interviewed Schoolmate 3 who, according to notes provided by the District, stated that Schoolmate 1 was telling him to show his privates and that two other male students, Schoolmates 2 and 4, showed their private parts as well. The Principal also interviewed Schoolmate 1. The Principal relayed the Student's report and the report of Schoolmate 3 to District police on XXXXX, 2019.

According to a statement attributed to the Principal and a report by the District police officer, the District filed a Department of Family and Children's Services (DFCS) report on the same day.⁶ The Principal's statement reflects that she reported the incident involving the Student to one of the Complainants around noon on XXXXX, 2019; called Schoolmate 1's mother around the same time; and suspended Schoolmate 1 off of the bus for two days.⁷

Later that day, the Complainants wrote a letter to the School's Assistant Principal requesting more information on the incident that occurred and requesting a dedicated bus monitor, a plan to ensure that Schoolmate 1 does not have access to the Student and that the School provide in-school counseling.

On XXXXXXX, 2019, the Principal interviewed Schoolmate 2, who stated that Schoolmate 1 showed his "stuff" to others and admitted he had shown his once. The Principal then relayed this information to the District police officer. According to the report of the District police officer, Schoolmate 4 told the Principal that he saw Schoolmate 1 telling Schoolmate 3 to show his privates. Schoolmate 4 also reportedly said that Schoolmate 1 had done the same to him, and he told the bus driver. The police report does not reflect the date of the interview of Schoolmate 4.

⁵ In a statement provided to OCR by the District and during an interview with OCR, the Principal identified the Assistant Principal as the administrator who interviewed the Student. OCR had not interviewed the Assistant Principal at the time that the District expressed an interest in resolving the complaint under CPM Section 302.

⁶ The District has not yet provided the DFCS report to OCR. The Principal's statement and the police report do not provide any information about the DFCS report.

⁷ The report of the District police officer reflects that the Principal told Schoolmate 1's mother that he was not allowed to ride the bus until the investigation was completed.

Additionally, Schoolmate 1's teacher wrote a statement stating that Schoolmate 1's mother called her to inform her that the student admitted to inappropriately touching the Student on the bus.

According to her statement, the Principal received a "transcript" on XXXXX, 2019, and according to the report of the District police officer on that day the Principal told the officer that videotape footage from the bus confirmed both incidents. A document which the District characterizes as a summary of the videotape, reflects that interactions between the Student and Schoolmate 1 on the morning of XXXX, 2019 XXXXXX. The Student told a male student on the bus that Schoolmate 1 touched her and asked the other student to report Schoolmate 1 to a teacher. When the other student attempted to talk to the driver of their bus, that driver and a driver from a different bus yelled at the student and told him to sit down. The Student also attempted to make a report to the driver of her bus, but the driver cut the Student off when a teacher arrived.

On XXXXX, 2019, the Principal emailed School teachers and staff stating that they would initiate a safety plan for the Student which would include the restrooms being cleared prior to the Student entering to ensure no contact in an unsupervised area, recess not occurring in the same location simultaneously for the Student and the "other student", teachers coordinating to ensure there will be no simultaneous events or activities for the Student and the other student, and the teachers coordinating transitions to avoid interaction to the best of their ability.

On XXXXX, 2019, Schoolmate 1 and Schoolmate 2 were disciplined. Schoolmate 1's disciplinary record states that he was being disciplined for exposing his private parts and making inappropriate gestures and comments on XXXXX, 2019, and for putting a child's hand on his private part and intentionally kissing and rubbing the private of a student without the Student's consent on XXXXX, 2019. Schoolmate 1 was suspended for ten days. Schoolmate 2 was disciplined for exposing his private parts on XXXXX, 2019. Schoolmate 2 was suspended for five days.

On XXXXX, 2019, the Complainants wrote an email to the Principal requesting more information about the Student's school and bus safety plan, accommodations for the Student's "tardy"⁸ the preceding Friday, the timeline for the completion of the investigation and counseling services for the Student. The email stated that the Student does not understand why no one helped her when she called out for Schoolmate 1 to "stop".

On XXXXX, 2019, the Student's IEP team met and decided to add a bus monitor to the Student's school bus and developed a safety plan for the bus. The Complainants were informed that the bus monitor would receive crisis prevention intervention training and behavior intervention plan (BIP) training.

The bus safety plan included assigned seating, strategically seating the Student near preferred peers, a bus monitor who would do a "check in" and "check out" with the Student when getting on and off the bus, strategies so that the Student feels able to express feelings or concerns with the monitor, implementing a procedure for the Student to express feelings or concern with the

⁸ The incident occurred on a Thursday and Complainants stated that she was tardy the next day due to not being able to ride the bus.

monitor, BIP training for the monitor and bus driver, and in any event where bus personnel (driver or monitor) is changed, notice to the Complainants and BIP training by a behavior specialist.

Both Schoolmate 1 and Schoolmate 2's parents were informed via mail on XXXXX, 2019 of the reason for the students' suspension and that during their suspension, they were not to participate in or attend any District school activity on or off campus. With regard to the XXXXX, 2019 incident, the letter to the parent of Schoolmate 1 stated he exposed his private parts, put a child's hand on his private part and intentionally kissed and rubbed the private area of a student without the student's consent.

In a XXXXX, 2019 letter District staff informed the Student's bus driver that his actions on XXXXX, 2019 were in violation of the Transportation Handbook and that the District would be moving forward with the termination of his employment. Specifically, the letter referenced the bus driver's having dismissed two students who attempted to notify him of inappropriate sexual contact made by another student on the bus and stated that the bus driver's "overall lack of situational awareness allowed the student the opportunity to complete the act." The bus driver resigned that day.

On XXXXX, 2019, the Attorney, on behalf of the Complainants, wrote a letter to the District's CLAO referencing the Student's report of being inappropriately touched, bullied and sexually harassed.⁹ The Complainant's letter requested a timeline for the completion of the investigation into the XXXXX, 2019 incident in addition to information about what occurred, how long it occurred, whether or not the offenders were punished, and any actions taken by the District or School to ensure the Student's safety. The letter also requested an IEP meeting to discuss the Student's services, a copy of the safety plan, and reimbursement for costs of the Student's counseling assessment and any resulting counseling services.

On XXXXX, 2019, the Complainants followed up with the Support and Services Administrator via email stating that they were made aware by police that further review of the video from the bus revealed that both the student who sexually assaulted the Student as well as another male student had been exposing their genitals on the bus for some period of time prior to the assault. They requested confirmation that the other student would also no longer be on the Student's bus.

On XXXXX, 2019, the CLAO responded to the Attorney's XXXXX, 2019 letter via email, stating that District staff have completed the investigation of the incident and that due to the Family Educational Rights and Privacy Act (FERPA), specifics could not be revealed. However, the CLAO stated that a student "was involved" with the Student and that the interaction lasted approximately 15 minutes. The CLAO's email also said that the District had implemented the Student's safety plan, which was attached, and a bus monitor was placed on the bus. The CLAO stated that the student involved in the incident is no longer attending the School and is no longer on the bus with the Student.

On May 22, 2019, the Attorney filed a Student Equity Grievance with the District on behalf of the Complainants. Specifically, the grievance stated the Student was sexually assaulted XXXXX 2019, the bus videotapes were reviewed, and the sexual assault incident was verified as were

⁹ The letter also characterized the incident reported by the Student as possible harassment based on disability.

several incidents over multiple days of Schoolmate 1 and Schoolmate 2 exposing themselves to the Student on the bus. The Attorney stated that although Schoolmate 1 was reportedly transferred to a different XXXXX school, Schoolmate 2 was still assigned to the same bus and continued to attend the same school as the Student. As relief the Attorney requested the identities of the two male students, removal of Schoolmate 2 from the Student's school bus and environment, reimbursement for the Student's counseling sessions and mileage for transporting the Student to the School subsequent to XXXXX, 2019. In addition, the Attorney requested changes to the District's Title IX policies and that all buses transporting students with an IEP have an adult monitor.

On May 24, 2019, the Student's IEP team met again. The Complainants requested the reason for the Student's bus monitor in her IEP's transportation section to be changed to reflect that the bus monitor is there to protect the Student's safety.

On June 12, 2019, during an IEP meeting, the Complainants requested that the bus monitor be a female due to the nature of the incident on the bus. The Complainants stated they were frustrated the District had not responded to the Title IX complaint yet and they wanted assurances that the Student will not be riding the bus with any of her perpetrators. According to the IEP, District staff advised the parents that the Title IX matter was outside the purview of the IEP team, but the Assistant Director of Special Education agreed to relay the Complainants' concerns to the Assistant Superintendent.

On June 20, 2019, the CLAO wrote in response to the May 22, 2019 grievance filed by the Attorney, citing FERPA restrictions with regard to the request for information on the discipline and names of the students involved in the incidents. In response to the allegation that there were incidents of indecent exposure, the CLAO wrote that the additional student would not be attending the School next school year and that the current safety plan was put in place to protect against any additional incidents. In response to the request for counseling reimbursement, the CLAO stated the next IEP meeting would be the appropriate venue for discussing the counseling request.

In an interview with OCR, the CLAO stated that this June 20, 2019 letter was the official response from the District to the May 22, 2019 Student Equity Grievance.

On June 27, 2019 the Student's transportation plan reflected that the Student needs a bus monitor to support her anxiety caused by a previous traumatic event. Additionally, the plan reflected that the Student requires a female driver and monitor.

In an interview with OCR, the Principal clarified that School administrators involved in the investigation did not view the actual bus video footage of the days in question. Rather, in response to the Principal's request to pull video footage, the District's transportation department reviewed the footage requested and wrote what they found in a summary. The Principal stated that they requested the transportation department review footage from the morning of XXXXX and the week prior to that date.

The District's Title IX Coordinator stated in an interview with OCR that her only involvement in the investigation was when the Principal consulted her in XXXXX 2019 about appropriate discipline for Schoolmates 1 and 2. When asked about who is in charge of Title IX

investigations, she stated that it was whoever the harassment is reported to, in this instance, the Principal and Assistant Principal. She stated she was more of a manager and not an investigator of Title IX complaints. When asked if any of these employees were trained in investigating sexual misconduct, she stated they receive a basic overview of discipline training but nothing additional or specific to Title IX had been provided.

Resolution Agreement

Prior to OCR's completion of the investigation, the District expressed an interest in resolving the complaint pursuant to Section 302 of the CPM and OCR determined that it would be appropriate to resolve this complaint under Section 302 because OCR's investigation had identified issues that could be addressed through a resolution agreement.

The District signed the enclosed Agreement which, when fully implemented, will resolve the complaint allegations. To address the complaint allegations, the Agreement includes, among others, a requirement that the District assess whether the District's investigation of the Student's XXXXX, 2019 bus incident and the District's response to the XXXXX, 2019 Student Equity Grievance filed by the Attorney regarding schoolmates allegedly exposing themselves to the Student, complied with the requirements of Title IX and FERPA to provide a prompt and equitable response. The District will also convene a meeting to determine what counseling services and/or compensatory education or other services, if any, are needed for the Student. Finally, the District agreed to provide training to District administrators and staff involved in investigating sexual harassment complaints.

Conclusion

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 have the right to 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 Complainants 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.

If you have any questions about this letter, please contact Eulen Jang at Eulen.Jang@ed.gov or at 404-974-9467, or me at 404-974-9354.

Sincerely,

Scott R. Sausser
Supervisory General Attorney

cc: (By electronic mail only)
XXXXXX, Esq. (Attorney for the District)
XXXXXXXXXX