



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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October 5, 2015

Dr. John Byrne
Superintendent
Community High School District 218
10701 S. Kilpatrick Avenue
Oak Lawn, Illinois 60453

Re: OCR #05-15-1197

Dear Dr. Byrne:

This is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Community High School District 218 (District) on April 8, 2015, alleging discrimination on the basis of sex as well as retaliation. Specifically, the complaint alleged that:

1. In January or February 2015, the District discriminated against Student A based on sex when it failed to equitably respond to the Complainant's internal complaint that Student A's PE teacher allegedly made an inappropriate gender-based comment and an intimidating look (i.e., smirk) to Student A because she needed to sit out of swim class due to her menstrual cycle, had Student A read aloud a doctor's note excusing her from swimming due to her menstrual cycle, and subsequently told her that she needed to return to P.E. class.
2. In February 2015, the District subjected the Complainant to retaliation when an administrator questioned her about her residency after she complained of sex discrimination.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance as well as retaliation. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX.

During the investigation, OCR reviewed data provided by the District and the Complainant and interviewed the Complainant, Student A, Student A's physical education teacher (PE Teacher A) and the District's XXXX XX XXXXXXXXX. The District requested to resolve Allegation 1 prior to the conclusion of OCR's investigation in accordance with Section 302 of OCR's *Complaint Processing Manual*. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which,

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when fully implemented, will resolve the issues raised in Allegation 1 of the complaint. With respect to Allegation 2, OCR determined that there is insufficient evidence to support the allegations of discrimination and retaliation. The reasons for this determination are set forth below.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

Under Title IX, schools are responsible for providing students with a nondiscriminatory educational environment. Sexual or gender-based 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 can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program or activity.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment created a hostile environment, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a school's responsibility, regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination. A school has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment.

Title IX Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), provides that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by the regulation.

The Title IX regulation, at 34 C.F.R. § 106.8(a), provides that a recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including, but not limited to, any investigation of any complaint communicated to it alleging noncompliance with Title IX (including allegations that the recipient failed to respond adequately to sex or gender based harassment) or alleging any actions that would be prohibited by Title IX. Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sex or

gender based harassment, sexual harassment, and sexual violence, and that they understand how the recipient's grievance procedures operate. This provision further requires that the recipient notify all its students and employees of the name, office and email address and telephone number of the employee or employees so designated.

In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX.

- notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other students, or third parties;
- provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- written notice to the parties, complainant and alleged perpetrator, of the outcome of the complaint; and
- an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual harassment, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX.

- A statement of the school's jurisdiction over Title IX complaints;
- Adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- Reporting policies and protocols, including provisions for confidential reporting;
- Identification of the employee or employees responsible for evaluating requests for confidentiality;
- Notice that Title IX prohibits retaliation;
- Notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- Notice of available interim measures that may be taken to protect the student in an educational setting;
- The evidentiary standard that must be used (preponderance of the evidence) i.e., more likely than not that harassment or sexual violence occurred) in resolving a complaint;
- Notice of potential remedies for students;
- Notice of potential sanctions against perpetrators; and
- Sources of counseling, advocacy and support.

In some situations, if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents. 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 school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. At the conclusion of a school's investigation, both parties must be notified, in writing, about the outcome of the complaint, i.e., whether harassment was found to have occurred.

When taking steps to separate an alleged target of harassment from the alleged perpetrator during and subsequent to an investigation, a school should minimize the burden on the complainant, and thus should not, as a matter of course, remove the complainant from his or her classes while allowing the alleged perpetrator to remain. Additionally, during the course of a school's investigation, school officials should notify the complainant of his or her right to file a criminal complaint and should not dissuade a victim or his or her parent from doing so during or after the school's internal Title IX investigation. A school may also be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student. Even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

For Title IX purposes, if a student requests that his or her name not be revealed to the accused or asks that the recipient not investigate or seek action against the accused, the recipient should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the accused. The recipient should notify students of the information that will be disclosed, to whom it will be disclosed, and why. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. If the school determines that it can respect the student's request not to disclose his or her identity to the accused, it should take all reasonable steps to respond to the complaint consistent with the request.

If a recipient delays responding to allegations of harassment or responds inappropriately, the recipient's own inaction may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial harassment and the effects of the recipient's failure to respond promptly and appropriately.

Depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.

Finally, the 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, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

The Title IX regulation, at 34 C.F.R. § 106.9(a), provides that a recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, 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 not to discriminate in such a manner.

Retaliation

The Title IX implementing regulation, at 34 C.F.R. § 106.71, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation.

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action. In considering whether an individual has been subjected to an adverse action, OCR considers whether the recipient's action significantly disadvantaged the individual and whether the challenged action might reasonably have been expected to deter or preclude the individual from engaging in further protected activity. OCR considers whether the alleged adverse action caused lasting harm or had a deterrent effect. Merely unpleasant or transient incidents are not considered adverse.

If all of the elements of a *prima facie* case of retaliation are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that treatment of the person was inconsistent with the treatment of similarly situated individuals or established policy or practice.

District Policies and Procedures

The District publicizes its policies and procedures prohibiting discrimination and harassment on the basis of sex, as well as policies and procedures for filing complaints of sex discrimination and harassment online via the District’s website.¹ The 2014-2015 Student Discipline Handbook (Handbook) also provides a summary of the District’s policies and procedures regarding harassment and filing a complaint of discrimination or harassment.²

Nondiscrimination Notice

Board Policy 7:10, Equal Educational Opportunities, states, in pertinent part, that “equal educational and extracurricular opportunities shall be available for all students without regard to ... sex” and that “no student shall, based on sex, sexual orientation, or gender identity be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities.” This policy also states that any student may file a complaint by using the District’s Uniform Grievance Procedure. The statement does not reference the Complainant Manager, Nondiscrimination Coordinator or OCR.

Title IX Coordinator

Board Policy 7:20, Harassment of Students Prohibited, and Board Policy 2:260, Uniform Grievance Procedure, identify the Director of Student Services and Special Education (Director of Student Services) as a “Complaint Manager” and “Nondiscrimination Coordinator” and the Assistant Superintendent for Personnel and Support Services (Assistant Superintendent) as the second “Complaint Manager” by name and title, and provides their respective contact information, including address, telephone numbers, and email addresses. The policies do not specifically label the Nondiscrimination Coordinator and Complainant Managers as the District’s Title IX Coordinator(s); however, both policies include a reference to Title IX, clearly indicating that the Nondiscrimination Coordinator and Complainant Managers are responsible for responding to Title IX complaints. The Nondiscrimination Coordinator and Complaint Manger are also identified by name and title in the Handbook, and their respective contact information (address, telephone number, and email address) is provided.

The Administrative Procedure 2:260, Nondiscrimination Coordinator and Complaint Manager, delineates the roles of the Nondiscrimination Coordinator and Complainant Manager(s). The Nondiscrimination Coordinator “directs the District’s compliance with federal and state laws governing discrimination and harassment...” in employment and education. The Nondiscrimination Coordinator is responsible for fully informing all

¹http://policy.microscribepub.com/cgi-bin/om_isapi.dll?clientID=3493708375&depth=2&infobase=community_218.nfo&softpage=PL_frame

²<http://chsd218.org/modules/groups/homepagefiles/cms/805399/File/Discipline%20Handbook/2013-14%20Discipline%20Handbook%20Final%20Draft.pdf?sessionid=ab9244cbde2f45bd26e4f9416d666ca5>

employees and students about the District's commitment to equal employment and educational opportunities and a harassment-free environment, maintaining grievance and compliance records and files, assisting the Human Resources Manager with compliance recordkeeping and notice requirements concerning discrimination and harassment in the workplace, and making recommendations for action by appropriate decision makers. The Complaint Manager(s) are responsible for implementing and administering the complaint process and time frames that are set forth in the Uniform Grievance Procedures. To this end, the Complaint Managers duties include the following: managing complaints alleging a violation of any Board nondiscrimination and harassment policy or procedure; assisting complainants and potential complainants by providing consultation and information to them; attempting to resolve complaints without resorting to the formal grievance process provided in the Uniform Grievance Procedures; informing complainants and potential complainants and witnesses that the District prohibits any form of retaliation against anyone who files a good faith complaint or provides information in an investigation; receiving formal complaints and notifying individuals of the ensuing process; investigating complaints or appointing a qualified individual to undertake the investigation on his or her behalf; and preparing a written report describing the complaint, investigation, and findings and recommendations, which is provided to the Superintendent and/or Board of Education.

District's Policies against Sexual Harassment

Board Policy 7:20, Harassment of Students Prohibited, states that “[n]o person, including a District employee or agent, or student shall harass, intimidate, or bully a student on the basis of ...sex”, and provides examples of prohibited conduct, such as “name-calling, using derogatory slurs, stalking, sexual violence, causing psychological harm, threatening or causing physical harm...” The harassment policy also expressly states that “sexual harassment is prohibited,” and defines sexual harassment as “whenever [a person] makes sexual advances, requests sexual favors, and engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature.” The policy provides examples of sexual harassment such as “touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person’s alleged sexual activities” as well as sexual violence. The policy also provides examples of sexual violence including, but not limited to, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Board Policy 7:20 directs students to report incidents of bullying, sexual harassment to “the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, or a Complaint Manager,” and identifies by name the Director of Student Services as the Nondiscrimination Coordinator and the Assistant Superintendent and Director of Student Services as Complaint Managers, and includes their respective contact information (address, telephone number, email). The policy states that “complaints will be kept confidential to the extent possible given the need to investigate” and “students who make good faith complaints will not be disciplined.”

Board Policy 7:180, Prevention of and Responses to Bullying, Intimidation, and Harassment, prohibits bullying, including cyber-bullying, intimidation, and harassment on the basis of

sex, during any school-sponsored education program or activity; while in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities; through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment; or through the transmission of information from a computer that is accessed at a nonschool-related location, activity, function, or program or from the use of technology or an electronic device that is not owned, leased, or used by a school district or school if the bullying causes a substantial disruption to the educational process or orderly operation of a school. The policy provides that a report may be made orally or in writing to the District Complainant Manager or any staff member with whom the student is comfortable, and the staff member will, in turn, make a report to the Complaint Manager(s). The District's Principals are identified by name as "Complaint Managers," and their respective contact information, including address, telephone and email address, is provided. The policy does not include the Assistant Superintendent as a Complainant Manager or provide the name and contact information for the Director of Student Services who serves as the District's Nondiscrimination Coordinator.

Policy 7:180 also provides a prevention and response plan that includes (a) promptly notifying parent(s)/guardian(s) of all students involved in an alleged incident of bullying or harassment and to discuss, as appropriate, the availability of social work services, counseling, school psychological services, other interventions, and restorative measures; (b) conducting a prompt investigation of reports of all incidents of bullying or harassment, making all reasonable efforts to complete the investigation within 10 school days after the date of the report; (c) consistent with privacy law, providing parents/guardians of the students involved in the investigation information about the investigation and an opportunity to meet with the Principal or designee to discuss the investigation, findings of the investigation, and the actions taken to address the reported incident of bullying or harassment. The policy directs the Superintendent or designee to use interventions to address bullying or harassment, which may include school social work services, restorative measures, social-emotional skill building, counseling, school psychological services, and community-based services, and to provide the victim with information regarding services (counseling, support services, etc...) that are available within the District and community. Retaliation against any person who reports an act of bullying or harassment is prohibited. A student will not be punished for reporting an act of bullying or harassment, or supplying information, even if the District's investigation concludes that no bullying or harassment occurred, provided that the student did not knowingly make a false accusation or provide knowingly false information.

Section III. F. of the Handbook summarizes Board Policies 7:20 and 7:180, which indicates that bullying, intimidation, and harassment, including sexual harassment, on the basis of sex is prohibited. The Handbook encourages students to report bullying, intimidation, and harassment, including sexual harassment, to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complainant Manager, and provides the name and contact information of the Nondiscrimination Coordinator and Complaint Manager. The Handbook notes that complaints will be kept confidential to the

extent possible given the need to investigate and that students who make good faith complaints will not be disciplined. Lastly, the Handbook states that any employee or student found to have engaged in bullying, intimidation, or harassment will be subject to disciplinary action, including up to discharge in the case of an employee or a suspension or expulsion in the case of a student.

Grievance Procedure

The District's Uniform Grievance Procedure, Board Policy 2:260, advises students, parents, guardians, employees, or community members to file a complaint with a District Complaint Manager "if he or she believes that the Board of Education, its employees, or agents have violated his or her rights" under Title IX. The Uniform Grievance Procedure identifies the Director of Student Services by name and title as a Complainant Manager and Nondiscrimination Coordinator and the Assistant Principal by name and title as a Complaint Manager, and provides their respective addresses, telephone numbers, and email addresses. The procedure provides that the identity of the Complainant and any student witnesses will not be disclosed except as required by law, as necessary to fully investigate the complaint, or as authorized by the complaint, student or student's parent.

This procedure states that "[t]he Complainant Manager will attempt to resolve complaints without resorting to this grievance procedure; however, if a complaint is filed, the Complainant Manager will address the complaint promptly and equitably [and]...the right of a person to prompt and equitable resolution of a complaint filed hereunder shall not be impaired by the person's pursuit of other remedies."

Regarding the investigation, the Uniform Grievance Procedure provides that the Complaint Manager will investigate the complaint or will appoint a qualified person to undertake investigation on his or behalf, and will file a written report of the findings to the Superintendent within 30 business days. All deadlines may be extended by the Complaint Manager as he or she deems appropriate. The Administrative Procedure, an internal District document, to the Uniform Grievance Procedures, 2:260-AP1 requires the Complaint Manager or other investigator to provide a fair opportunity for both sides to be heard; to develop a plan including witness list, order of interviews, questions for witnesses and review of physical evidence; to interview witnesses, collect physical evidence, and document the investigation process in a file separate from personnel or student record files, and to prepare a written report making credibility determinations and factual findings under the preponderance of the evidence standard (i.e., whether the incident occurred was more likely than not). The Uniform Grievance Procedure requires the Superintendent to mail his or her written decision to the complainant within 5 business days of receipt of the investigation findings. A complainant may appeal an adverse decision to the Board within 10 school business days by making a written request to a Complaint Manager. The Superintendent shall inform the Complainant of the Board's action within 5 school days of the Board's decision.

Facts

On XXXXXXXX X, XXXX, the Complainant called the XXXXXXXXXX to complain about PE Teacher A's policy of requiring girls who sit out of swim class during their menses to make up the lost participation points by attending afterschool weightlifting. She also reportedly expressed concern that PE Teacher A made Student A read aloud a doctor's note excusing her from swimming due to her menstrual cycle and made a sex or gender based comment to Student A with inappropriate looks (i.e., smirked) when she needed to sit out of swim class for this reason. The Complainant told OCR that she used the words "sexual harassment" during the telephone call and asked the XXXXXXXXXX how she would know that her concern was being treated as a formal complaint. The XXXXXXXXXX reportedly told her that she could send him an email confirming her formal complaint, which she later did on XXXXXXXX X, XXXX. The Complainant told OCR that the XXXXXXXXXX also asked her to discuss her complaint with PE Teacher A, which she agreed to do; however, she later told OCR that she felt that it was inappropriate to require her to address her complaint directly with Student A's PE Teacher.

The Complainant reported that she agreed to meet with the XXXXXXXXXX and XXXXXXXXXX XXXXXXXXXX in person on XXXXXXXX XX, XXXX, to further discuss her concerns. However, on XXXXXXXX XX, XXXX, the Complainant sent the XXXXXXXXXX an email cancelling the meeting and complaining that the XXXXXXXXXX was requiring her to mediate her complaint without adequately informing of her right to confidentiality and for an internal investigation under Title IX. The XXXXXXXXXX responded to the Complainant's email, copying the XXXXXXXXXX XXXXXXXXXX and Title IX Coordinator. In the email, the XXXXXXXXXX noted that the Complainant agreed to meet with the XXXXXXXXXX XXXXXXXXXX and PE Teacher A and directed the Complainant to the District's Title IX grievance procedures in the agenda. He also informed the Complainant that his preliminary findings regarding PE Teacher A's conduct "did not match [her] allegations," and assured her that "after school make ups have nothing to do with gender and the time of the month." The XXXXXXXXXX indicated that the District would proceed with the investigation, which would require student statements including a statement from Student A, and asked for permission to interview Student A. The XXXXXXXXXX closed the email by informing the Complainant that, once they finish the investigation, the District would send her a letter. The XXXXXXXXXX sent a second email asking the Complainant for names of students who allegedly heard PE Teacher A's comment.

The Complainant responded to the XXXXXXXXXX's emails, reiterating that she was not informed of her right to confidentiality or her right to decline mediation. She asked for timelines for the investigation and reiterated that she wanted to be present if her daughter is questioned. She also provided the first name of a student in Student A's PE class who likely overheard PE Teacher A's comments, and stated that any child who sat out that week should be documented in records. The XXXXXXXXXX and XXXXXXXXXX XXXXXXXXXX subsequently called the Complainant, and the XXXXXXXXXX XXXXXXXXXX shared the District's policy regarding PE make-ups and that it is applied consistently to both genders.

The Complainant told OCR that the XXXXXXXXXX attempted to intimidate her during the XXXXXXXXXX XX, XXXX telephone conversation by inquiring about her residency. She said that the XXXXXXXXXX questioned her about her “312” area code, address, and daughter’s “feeder” school, noting that some students are “out of district” and should not be attending the high school. The Complainant said that she told him that her cell phone is part of a family plan with her mother, and that she resides within the District. The Complainant provided an email dated XXXXXXXXXX XX, XXXX to the XXXXXXXXXX, with the XXXXXXXXXX XXXXXXXXXX and Title IX Coordinator copied, wherein she sarcastically thanks the XXXXXXXXXX for inquiring into Student A’s “feeder school” and confirming that she lives in the District. The Complainant did not report that she was subjected to a residency investigation or other residency proceedings.

The XXXXXXXXXX admitted to questioning the Complainant about her residency, but denies that the questioning occurred during the XXXXXXXXXX XX, XXXX telephone call, and instead asserts that the conversation occurred on XXXXXXXXXX XX, XXXX. The District provided a copy of the XXXXXXXXXX’s written statement, which is dated XXXXXXXXXX XX, XXXX stating that the Complainant’s “312” area code, which falls outside of the District’s boundaries, raised a concern and the XXXXXXXXXX asked if she lived in the District prior to his knowing that she was raising a potential Title IX issue. The District indicated that such questioning is routine and that the XXXXXXXXXX has questioned other parents who call from “312” area codes about their residency. The District reported that the Complainant’s residency was not formally investigated.

Thereafter, the District’s XXXX XX XXXXXXXXXX contacted the Complainant approximately four times to schedule the interview. The XXXX XX XXXXXXXXXX told OCR that she failed to show for two appointments with him, and when he called to inquire, the Complainant told him that she was really busy and did not have time to meet. An email indicates that the Complainant welcomed security staff to contact her; however, she told OCR that she wondered whether the XXXX XX XXXXXXXXXX was chosen for intimidation. The XXXX XX XXXXXXXXXX told OCR that the Complaint did not object to his attempts to schedule an interview and did not give any indication that she was upset that he was asked to conduct the interview.

The District reported that the Title IX Coordinator contacted the Complainant on XXXXXXXXXX XX and XXXXXXXXXX XX, XXXX to schedule a time to meet. The Complainant reported that the District’s Title IX Coordinator left her a voicemail on XXXXXXXXXX XX, XXXX, stating that she would attempt to contact her one more time, but if she did not hear from her, she would close the complaint file. The Complainant responded to Title IX Coordinator via email, informing her that she preferred to correspond with her, and not the XXXXXXXXXX, via email rather than by telephone. In her email, the Complainant outlined her original concerns as well as her grievances about the mishandling of her complaint; insinuated that the XXXXXXXXXX’s personal relationship with PE Teacher A that caused him to brush off her concerns; informed her that the XXXXXXXXXX questioned her residency in the midst of a conversation about the investigation in an attempt

to intimidate her; and complained that the Title IX Coordinator has not been responsive to her or apprised her of the status of her complaint.

The Title IX Coordinator responded to the Complainant's email on XXXXXXXX XX, XXXX. She told the Complainant that she had no problem communicating with her via email, but also offered to meet with her personally and suggested that she bring someone with her if it would make her feel more comfortable. The Title IX Coordinator explained that, although the XXXXXXXXX conducted the initial investigation, she would become involved as the District's complaint manager, and that her voicemail did not mean to imply that she was seeking to close the complaint, only that she did not want to continue to leave her messages if she did not want to pursue the complaint. The Title IX Coordinator outlined the steps remaining for the investigation and indicated that she could try to extract the evidence from her emails, but she normally meets with the complainant and interviews involved parties. The Complainant declined to meet with the Title IX Coordinator, and did not allow for Student A to be interviewed by the District.

On XXX XX, XXXX, following technical assistance from OCR, the District issued the Complainant a written letter summarizing its findings regarding her grievance. The letter summarizes the District's factual findings: that the PE make-up policy is applied equally to males and females; PE Teacher A denied making the "chatty" comment or intimidating looks to girls who sit out of PE during their menses; PE Teacher A admitted to having Student A read her note aloud, but was unaware that it was a doctor's note; and, although the XXXXXXXXX inquired about the Complainant's residency, it was not retaliation because he inquired before any notification of a Title IX complaint. The letter notes that the District offered to meet with the Complainant and interview Student A on five occasions, but those requests were declined, and that the Complainant did not provide any names of potential witnesses. The letter does not indicate whether the District made any attempt to identify potential student witnesses, including the student whose first name was provided by the Complainant, or through PE attendance records. Nor does the letter indicate whether the District sought documentary evidence or testimony from the XXXXXXXXX XXXXXXXX to corroborate the XXXXXXXXX's statement regarding retaliation.

Analysis and Conclusion

Allegation 2

OCR finds insufficient evidence of a prima facie case of retaliation. The evidence established that the XXXXXXXXX questioned the Complainant about her place of residence when he realized that she was calling from a 312 area code, which lies outside of the District's boundaries; however, the evidence is insufficient to conclude that he questioned her after he was aware of her Title IX complaint. The timing of the XXXXXXXXX's actions is in dispute and, in making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR finds that the evidence is insufficient evidence to establish the

XXXXXXXXXX's awareness of Complainant's Title IX complaint, and therefore, the evidence fails to establish a causal connection between the Complainant's protected activity (i.e., complaint) and the XXXXXXXXXXX's actions.

Additionally, OCR concludes that, even assuming a causal connection, the District did not take adverse action against the Complainant. To constitute an adverse action under Title VI, a recipient's action must significantly disadvantage the individual and the challenged action must reasonably be expected to deter or preclude the individual from engaging in further protected activity. OCR therefore considers whether the alleged adverse action caused lasting harm or had a deterrent effect. Here, although it is clear that the XXXXXXXXXXX questioned the Complainant about her residency and caused her distress, the District did not threaten to or subject the Complainant to a formal residency investigation or proceeding, or significantly disadvantage her or Student A. OCR cannot conclude from the evidence that the XXXXXXXXXXX's questioning of the Complainant based on her out of District telephone number, caused lasting harm or might reasonably be expected to deter or preclude her from engaging in further protected activity. To the contrary, the Complainant continued to engage in protected activity when she complained about the XXXXXXXXXXX's actions to the District's Title IX Coordinator and subsequently filed this complaint with OCR. Because the evidence is insufficient to establish that the District took adverse action against the Complainant, a prima facie case of retaliation has not been established with respect to this allegation.

Lastly, even assuming a prima facie case of retaliation, the evidence establishes that the XXXXXXXXXXX had a legitimate, non-retaliatory reason for questioning the Complainant about her residence. The evidence established that District routinely investigates the residency of students when it receives information suggesting that a student resides outside of the District's boundaries (i.e., returned mail, numerous tardies, anonymous tips), and the XXXXXXXXXXX has questioned other parents about their residency when he receives a telephone call from an area outside of the District's boundaries. When the Complainant explained she was on a family plan with her mother and confirmed her residency in the District the XXXXXXXXXXX immediately dropped the inquiry. OCR found no other evidence of retaliation. Therefore, based on the information provided, OCR finds the preponderance of the evidence does not support a conclusion that the District retaliated against the Complainant as alleged.

Allegation 1

The District requested to resolve Allegation 1 prior to the conclusion of OCR's investigation. In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Based on the above, OCR determined that a Resolution Agreement is appropriate under the circumstances present in this particular case to resolve Allegation 1. The enclosed Agreement, when fully implemented, will address all of OCR's compliance concerns. The provisions of the Agreement are aligned with Allegation 1 and the

information obtained during OCR’s investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement until the District is in compliance with the Title IX regulations at issue in the case.

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.

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.

The complainant may file a private suit in Federal court, whether or not OCR finds a violation.

If you have any questions, please contact Melissa Howard at 312-730-1527 or by email at melissa.howard@ed.gov.

Sincerely,

Dan Altschul
Acting Team Leader

Enclosure

cc: Mr. Scott F. Uhler