



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

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January 27, 2017

Jim Bauck, Ph.D
Superintendent
Eastern Carver County Schools –
Independent School District 112
11 Peavey Road
Chaska, MN 55318

RE: OCR Case No. 05-16-1367
Eastern Carver County Schools ISD 112

Dear Superintendent Bauck:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on June 7, 2016 against Eastern Carver County Schools ISD 112 (District) alleging discrimination on the basis of disability and sex.

The complaint alleged that:

1. The District discriminated against a former student (Student A) at the District's Chanhassen High School (School) on the basis of disability (XXXXXX XXXXXX XXXXXX, XXXXXX, XXXXXX, and XXXXXX) by failing to identify, locate, and evaluate Student A for special education and related services during the 20XX calendar year; and
2. The District discriminated against Student A on the basis of sex when, from approximately XXXXX 20XX to XXXXX 20XX, the District failed to promptly and equitably respond to sex-based harassment of Student A by another student at Chanhassen High School (Student B).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131–2134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. OCR is also responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance and a public entity, the District is subject to the provisions of Section 504, Title II, and Title IX.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standards

Disability Discrimination

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The Title II implementing regulation provides, at 28 C.F.R. § 35.130(a), that no qualified individual with a disability may, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any public entity.¹

The Section 504 regulation, at 34 C.F.R. § 104.8, requires recipients to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability in violation of Section 504. The notice must also include the contact information (name or title, address and telephone number) for the recipient's Section 504 coordinator. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, or applicants, it shall include in those materials or publications the notice of nondiscrimination.

The regulation implementing Section 504 at 34 C.F.R. § 104.32, requires a recipient that operates a public elementary or secondary education program or activity to annually undertake to identify and locate every qualified student with a disability residing within the recipient's jurisdiction who is not receiving a public education. The 504 implementing regulation, at 34 C.F.R. § 104.35, also requires that a recipient conduct an evaluation of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement, and sets forth the standards and procedures that the recipient must follow in conducting such an evaluation.

Section 504 and Title IX Grievance Procedures

The Section 504 regulation, at 34 C.F.R. § 104.7, requires recipients that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504.

¹ The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in the complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, OCR applied the relevant Section 504 standards in analyzing the issues raised in the complaint.

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 sexual harassment). Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including 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 address, and telephone number of the employee or employees so designated.

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 Title IX.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination and harassment. These include:

- Notice to students and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaint alleging discrimination or harassment carried out by employees, students or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to both 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.

Sex Discrimination

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

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that recipients implement specific and continuing steps to notify applicants for employment, students, and others that it does not discriminate on the basis of sex in the education programs or activities it operates. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients

to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students. The notice of nondiscrimination must state that the recipient does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the recipient's Title IX Coordinator or to OCR.

Student-on-student harassment on the basis of sex is a form of discrimination prohibited by Title IX and the above regulations, if the harassment creates a hostile environment. 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, such as sexual assault or acts of sexual violence. 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.

Title IX prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation or hostility based on sex or sex-stereotyping. Thus, students who are harassed for exhibiting what is perceived as a stereotypical characteristic for their sex or failing to conform to stereotypical notions of masculinity and femininity are protected from discrimination under Title IX.

Harassing conduct may take many forms, including verbal acts and name calling, nonverbal behavior, such as graphic and written statements, and conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Conduct is unwelcome if the student did not request or invite the conduct and regarded it as undesirable or offensive. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the person allegedly subjected to harassment.

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. Generally, a recipient has "notice" of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. In some situations harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extra-curricular activities, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the recipient on notice.

Labels for conduct such as "bullying," "hazing," or "teasing" do not determine how a recipient is obligated to respond to possible harassment. When misconduct that falls under a

recipient's anti-bullying policy is on the basis of sex, the recipient is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.

In some situations where a school knows of some 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 school'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 about the outcome of the complaint.

All of the above 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. 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. A recipient 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 depending on how widespread the harassment was and whether there have been any prior incidents. 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.

Background

The District

The District is a public school district serving students in pre-kindergarten through twelfth grade residing in Carver, Chanhassen, Chaska, and Victoria, Minnesota. The District has three middle schools, including Chaska Middle School East (East), and three high schools, including Chanhassen High School (Chanhassen) and Chaska High School (Chaska).

Nondiscrimination Notice

Board Policy 102, *Equal Educational Opportunity Policy*, states, in pertinent part, that the District's policy is "to provide equal educational opportunity for all students."² Policy 102 states that "Students are protected from discrimination on the basis of sex pursuant to Title IX of the Education Amendments of 1972 . . .," and that the District "provides equal educational opportunity for all students and does not unlawfully discriminate on the basis of

² <http://www.district112.org/district-information/departments/specialized-education/>.

sex . . . [or] disability” Policy 102 provides that the District “makes reasonable accommodations for disabled students.”

Policy 102 states the School Board designates “one of the Athletics/Activities Directors as the Title IX coordinator, who coordinates the school district’s efforts to comply with and carry out its responsibilities under Title IX.” The Board also designates in Policy 102 “the Director of Administrative Services and the Director o[f] teaching and learning as the school district’s human rights officers to receive reports or complaints of discrimination toward a student.”

Policy 102 states that the District “shall conspicuously post the names of the Title IX coordinator and human rights officers.” Although the District provided OCR the name and contact information for the Assistant Principal/Athletics Administrator who serves as its Title IX coordinator, neither the District’s policies or procedures or its website identify the specific individual who serves in that role or contain the administrator’s contact information.

The District handbooks from the elementary, middle, and high school levels include nondiscrimination notices and include language that the Director of Administrative Services and Director of Teaching and Learning are the school district human rights officers who are designated to receive reports, complaints, or grievances under the student sex nondiscrimination policy. The District’s website identify the name and contact information (address, email address and telephone number) for the Director of Administrative Services³ and the current Associate Superintendent for Teaching and Learning, and the contact information is also available in some of the handbooks provided to OCR.

Disability Policies and Procedures

Board Policy 402, *Disability Nondiscrimination Policy*, states that the District’s policy is to comply with Section 504. The policy provides the title and contact information (address and telephone number) for the Director of Specialized Services, who is identified as the person responsible for assuring the District’s compliance with Section 504. The Director of Specialized Services is identified by name later in the procedures, District handbooks and on the District’s website, which also contains contact information (email address, and telephone number).⁴ The Director of Specialized Services is not specifically identified in the policies or procedures as the Section 504 Coordinator for the District.

Administrative procedures implementing Policy 402 (“Disability Nondiscrimination Policy Definitions and Procedures”) affirm the District’s responsibility to identify, evaluate, and provide free appropriate public education to qualified students with disabilities regardless of the nature or severity of the disability.

³ <http://www.district112.org/district-information/departments/human-resources/>.

⁴ <http://www.district112.org/district-information/departments/specialized-education/>.

The administrative procedures contain grievance and hearing procedures for parents/guardians who disagree with the identification, evaluation, educational placement, or provision of FAPE to their children. The procedure identifies the Director of Specialized Services as the person to whom grievances may be filed, and provides relevant contact information. OCR did not locate a District policy or procedure addressing its process for handling complaints of disability discrimination.⁵

Harassment Policies and Procedures

At all times relevant to the complaint, the District had policies in place prohibiting sexual and disability based harassment. The District's harassment policy was last revised in March, 2015.

The current version of the policy, Policy 413, *Harassment and Violence Prohibition Policy* (Current Policy 413), states, in pertinent part, that “[t]he school district prohibits any form of harassment or violence on the basis of . . . sex . . . [or] disability” by any student against any other student.⁶ The version of Board Policy 413 in effect between December 2010 and March 2015 (Prior Policy 413) and the District's handbooks for those times included a similar prohibition against sexual harassment and violence.

Current Policy 413 defines “harassment,” in relevant part, as “physical or verbal conduct . . . relating to an individual's or group of individuals' . . . sex . . . or disability . . . when the conduct: (1) has the purpose or effect of creating an intimidating, hostile, or offensive . . . academic environment; (2) has the purpose or effect of substantially or unreasonably interfering with an individual's . . . academic performance; or (3) otherwise adversely affects an individual's . . . academic opportunities.” The policy also defines “Sexual Harassment” as unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when: . . . that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment,” and provides as examples of sexual harassment including “unwelcome verbal harassment or abuse.” The policy states that sexual harassment may include, but is not limited to, unwelcome behavior or words directed at an individual because of gender. District handbooks direct individuals who believe their child has experienced sexual harassment during the school day or while participating in District activities to contact their building principal or the District's Human Rights Officers.

⁵ Policy 102 provides that the School District will act to investigate all complaints, either formal or informal, verbal or written, of any discrimination based on, among other protected statuses, disability. As noted previously, the policy also designates the Director of Administrative Services and the Director of Teaching and Learning as the school district's human rights officers to receive reports or complaints of discrimination.

⁶ All current School Board policies are available on the District's webpage <http://www.district112.org/school-board/policies/>. The District provided OCR copies of previous versions of policies relevant to the complaint.

Current Policy 413 contains a process for reporting and investigating alleged violations of the policy. The policy states that the building principal, the principal's designee, or the building supervisor (referred to in the policy as a "building report taker") is the person responsible at the building level for receiving oral or written reports of harassment or violence prohibited by the policy. The policy requires any adult District personnel who receives a report of harassment to inform the building report taker immediately, which the policy defines as within 24 hours. Upon receipt of a report, Current Policy 413 requires the building report taker to notify the District's human rights officer (HRO) immediately, without screening or investigating the report. The policy identifies the District's Director of Administrative Services as the District's HRO. As noted previously, Policy 102, the District's handbooks, and the Districts website provide the name and contact information for the Director of Administrative Services.

Within three days of receipt of a report or complaint alleging sexual harassment or violence, Current Policy 413 requires the HRO to undertake or authorize an investigation, which may be conducted by school district officials or by a third party designated by the school district. The policy requires the District to take immediate steps, at its discretion, to protect the target or victim, the complainant, and others as necessary pending completion of an investigation of alleged harassment or violence prohibited by the policy.

At the culmination of the investigation, Current Policy 413 requires the HRO to make a written report to the superintendent. The policy requires the report to include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of the policy.

Prior Policy 413, which was in effect until March 19, 2015, contains a somewhat different reporting and investigation process than Current Policy 413. Administrative procedures implementing Prior Policy 413 provided that the building principal was the person responsible for receiving oral or written reports of sexual harassment and violence at the building level. Upon receipt of a report, the procedures required the principal to notify and forward a copy of the report the HRO immediately without screening or investigating the report.⁷ Upon receipt, the HRO was to undertake or authorize an investigation, culminating in a written report of factual and legal findings to the Superintendent.

Staff Training

The District reported to OCR that building administrators review a summary of District policies annually with all staff. The District provided OCR copies of training materials used between the 2013-14 and 2015-16 school years. The training materials include specific

⁷ The reporting process from Prior Policy 413 is still applicable to some allegations of sexual harassment in the District (see Policy 522), which also purports to govern discrimination on the basis of sex by a teacher, administrator or other school district personnel, but does not specifically identify harassment as a type of discrimination covered.

references to Section 504 and sexual harassment and the District reported that those issues are covered annually in the presentations. The District also reported that a harassment and violence “Notice to District 112 Staff” is also posted visibly in each school building.

The District documented training that the District’s Section 504/Title II Coordinator, the Director of Specialized Education Services, received on Section 504. The District’s HRO told OCR that he did not receive any specific training with respect to his role as HRO. He presented on various policies to staff and students in his previous role as a high school principal in the District, and has attended various law seminars that have touched on the issues of sexual harassment and bullying during his time as HRO. The HRO told OCR that he personally conducts all investigations under Policy 413, and that he had conducted fewer than five investigations under the policy during his decade tenure as the District’s Director of Human Services. When asked, the HRO could not identify the standard of proof to be used for investigations under the policy.

OCR also spoke with the ninth and eleventh grade administrative dean for Chanhassen for the 2015-16 school year, who the Chanhassen building Principal identified as the “building report taker” under Policy 413. The Dean told OCR that he has never received any training on Policy 413, did not have a sense when Policy 413 should be followed, and had not used Policy 413 during his time with the District, despite having received complaints of sexual harassing conduct in the past.

Facts

Student A

Student A attended the District’s Chaska Middle School East (East) in sixth grade. At the end of his first year of middle school, Complainants noticed that Student A began failing to turn in his assignments regularly, and his grades and attendance dropped. According to Complainants, it was sometimes difficult to get Student A out of bed, and Student A also began to exhibit signs of compulsive behavior with respect to his appearance.

Complainants reported to OCR that the behaviors became progressively worse through Student A’s XXXXX grade year (20XX-XX school year). That year, Student A received a diagnosis of XXXXX XXXXX XXXXX from a personal physician. Complainants requested an evaluation of Student A for special education and related services. After conducting an evaluation, a team including Complainants found Student A ineligible for special education or other services. Student A also did not receive a Section 504 plan.

In XXXXX 20XX, Complainants notified the school that Student A was being assessed at a XXXXX XXXXX XXXXX. XXXXX XXXXX subsequently reported to the District that Student A had been involved in a XXXXX XXXXX XXXXX XXXXX XXXXX. Student A briefly transferred from the District to XXX XXXXX XXXXX for XXXXX care and educational services in XXXXX, 20XX, but returned to Chanhassen in XXXXX, 20XX.

In XXXXX 20XX, Student A received a diagnosis of XXXXX XXXXXXX XXXXX (XXXXX) and XXXXX XXXXX XXXXX (XXXXX) from a personal XXXXX. Student A's mother (Parent A) stated that she spoke with the special education coordinator in XXX about potentially evaluating Student A for special education services, but the special education coordinator informed Parent A that the evaluation would have to be completed in the XXXXX of 20XX. According to the District's Director of Specialized Education Services and 504 Coordinator (Director), the District has no record of receiving a copy of the XXXXX/XXXXX diagnosis. Documents produced by both Complainants and the District show that Parent A notified one of the District's special education coordinators that Student A had received the diagnoses and that she had left a copy of paperwork documenting the diagnoses with another staff member at the school to put in the coordinator's mailbox in XXXXX 20XX. A copy of the diagnosis was located in the files the District produced to OCR. According to the Director, the special education coordinator left the District in late XXXXX 20XX.

Parent A began communicating directly with Chanhassen High School staff regarding Student A's enrollment in the high school in the XXXX of 20XX. Parent A told Chanhassen staff that she wanted Student A to have a fresh start in high school, and the Director told OCR that Parent A did not request that the District evaluate Student A at that time. According to the Director, at no time did Student A's parents communicate to Chanhassen that Complainants had requested an evaluation for Student A in XXXXX 20XX. The Director told OCR that if such information had been communicated, Chanhassen employees would have referred Student A to the special education coordinator's replacement.

Documents produced by the District show that Parent A communicated with Student A's school counselor at Chanhassen in XXXXX 20XX regarding the XXXXX/XXXXX diagnosis and the request for an evaluation in XXXXX, and expressed in numerous emails with staff between XXXXX and XXXXX 20XX concerns about Student A's significant attendance, organizational, motivational, and academic issues. In one email, Parent A stated her belief that if an IEP had been written earlier in the year, it could have addressed those concerns.

Alleged Bullying of Student A by Student B

Student B attended East with Student A in the XXXXX and XXXXX grade (20XX-XX and 20XX-XX) and Chanhassen with Student A in XXXXX grade (20XX-XX). According to both Complainants and the District, the students did not consider themselves to be close friends, but were acquaintances and sometimes ate lunch together.

According to the Complainants, Student B physically, verbally and sexually harassed Student A during Student A's XXXXX, XXXXX and XXXXX grade years.⁸ Parent A told OCR she

⁸ Student A's XXXXX grade year was the 20XX-20XX school year. Student A's 9th grade year was the 20XX-20XX school year.

reported the harassment to District staff after each incident. Although the counselor followed up with both students after a reported harassing incident during Student A's XXXXX grade year, the District did not notify Parent A regarding her other reports of harassing conduct.

In XXXXX, 20XX, during the students' XXXXX grade year, Parent A reported to Student A's counselor and dean by email that Student B had secretly recorded two other peers having a conversation about Student A, and specifically talking about Student A's "loser-ish" Democratic views and calling him "gay." In the email report, Parent A stated that "[t]he boy who sent the text [i.e., Student B] was doing so as a friend and [Student A] does not plan to mention his name as it is irrelevant." According to the District, although Parent A stated that Student A would share his concerns and the video with the counselor, he did not do so, and no further concerns were raised about the video to the school.

XXXXX 20XX Incident and Investigation

On XXXXX XX, 20XX, while in the Chanhassen cafeteria, Student A sent an email to Student B that said "XXXXX XXXXXX XXXXX XXXXX XXXXX." After Student B reported the incident to his parent (Parent B), Parent B notified the XXXXX, who took Student A into XXXXX and notified the District. The XXXXX and XXXXX grade administrative dean for Chanhassen for the 20XX-XX school year (Dean) investigated the incident on behalf of the District.

The Dean began by interviewing Student B and Parent B on Monday, XXXXX XX, 20XX. During the interview, the Dean asked questions about Student B's interactions with Student A and their past history. Student B told the Dean that Student A had sent an email to him on Thursday, XXXXX XX, 20XX, which Student B found offensive. The email, a copy of which Parent B provided to the Dean, said "XXXXX XXXXX XXXXX XXXX XXXXX XXXXX XXXXX. . ."⁹ According to Parent B, in response to the email, Student B told Student A he wanted to sit by himself at lunch on XXXXX XX, 20XX. Student B said that Student A would not leave him alone and followed him around the lunch room. After the boys separated, Student B received the email from Student A stating, "XXXXX XXXXX XXXXX XXXXX XXXXX." According to the Dean, Parent B was very concerned that Student A was a threat to her son.

On Thursday, XXXXX XX, 20XX, the Dean interviewed Student A and Complainants. Student A admitted to sending the email, but reported that it was not intended to be taken seriously. At the meeting, Student A stated that his actions toward Student B had been in self-defense and in response to the numerous incidents of verbal, physical, and sexual harassment by Student B during middle and high school. With some hesitancy to say the word, Student A told the Dean that Student B would make comments about his "penis" and

⁹ According to the District, the term "XXXXX" is generally considered a derogatory term describing a person who is overly emotional or melodramatic.

had called Student A “gay” during middle school. Student A also reported that Student B had punched him and told him to go kill himself in the past.

Student A told the Dean that in the past week, Student B had made negative comments about Student A’s appearance, such as that he had long arms, had bad hair, and was not intelligent. Student A said that Student B got up in Student A’s face, waving his hands in front of his face, and that Student A was considering hitting Student B in the face with his computer in self-defense, but did not.

Regarding XXXXX XX, 20XX, Student A told the Dean that the boys were in the lunch line together and Student B told Student A to go away and that if he did not, Student B would throw food in Student A’s hair. According to Complainants, because of Student A’s XXXX and XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, a threat to throw food in Student A’s hair XXXXX XXXXX XXXXX XXXXXXX XXXXX XXXXX XXXXX XXXXXXX XXXXX. Student A told the Dean that he told Student B that he did not want to sit with him, but that Student B kept coming back and would not leave Student A alone. After the students separated, Student A used his phone in the lunch room to send the email to Student B.

During the interview of Student A on XXXXX XX, 20XX, the Dean gave Student A a “Tennessee Warning,” which the District described as a warning required under Minnesota law to be given to an individual asked to supply private or confidential data to a governmental entity. The Dean explained that a Tennessee warning was given to Student A in this situation because he was the alleged aggressor in the incident the Dean was investigating, and that in such circumstances the Dean regularly gave such a warning.

According to the Dean, he spoke to the Chanhassen Principal and the District’s HRO about Student A’s sexual harassment allegations immediately after the XXXXX XX meeting. The Dean told OCR that the Principal and HRO directed him to use the District’s “Bullying Investigation Form” to investigate the allegations of sexual harassment. The Dean described the Bullying Investigation Form as the District’s protocol for bullying investigations, and stated that he follows the bullying protocol in all cases, even if the bullying is alleged to involve harassment based on sex, race, or another protected status. The Dean said he used the bullying protocol and not the District’s sexual harassment policy (Policy 413) because the District saw Student A’s allegations of sexual harassment as bullying allegations, not sexual harassment allegations. The District’s HRO told OCR that the bullying protocol was used in this circumstance because the investigation focused not on Student A’s allegations of sexual harassment, but on Student A’s defense that he sent the XXXXX XX XXXXX because of Student B’s verbal and physical (not sexual) aggression toward Student A.

The Dean told OCR he met with Student B on XXXXX XX, 20XX about Student A’s allegations of self-defense. According to the Dean, Student B denied the allegations, but it is unclear about which allegations the Dean asked Student B, or if he specifically asked Student

B about the alleged instances of sexual harassment. Although the District provided OCR notes from the Dean's meeting with Student B on XXXXX XX, 20XX, the District provided no notes or other documentation regarding the XXXXX XX meeting. The Dean did not recall giving Student B a Tennessee Warning at the meeting, and no warning is documented in the paperwork the Dean completed. The Dean indicated a Tennessee warning might not have been appropriate for Student B because he was the target, not the aggressor, of the alleged bullying.

The Dean told OCR that his investigation was limited to speaking to Student A and Student B and their parents, reviewing the student information system for any record of interactions between the students, and his own personal knowledge that no sexually harassing incidents had been reported to him during team meetings with the students' teachers and counselor. The Dean did not directly interview other individuals when investigating the allegations, such as the students' counselors or teachers at the middle or high school level. There is no evidence that the Dean asked Student A or Complainants about potential witnesses to the alleged conduct or that he interviewed classmates who may have witnessed interaction between Student A and Student B.

The Dean notified Complainants at a meeting on XXXXX XX, 20XX, that the District had determined that Student A sent the XXXXX to Student B on XXXXX XX, 20XX, that Student A was the aggressor that day in the cafeteria—not Student B—and that the administration was planning to recommend that the Board of Education XXXXX Student A. Complainants provided OCR a copy of an audio recording of the XXXXX XX meeting, which OCR reviewed. At the meeting, the Dean shared a draft statement he had prepared summarizing Student A's statements to the Dean at the XXXXX XX meeting. Parent A expressed concerns at the XXXXX XX meeting that the Dean included no information about any of Student A's allegations of sexual harassment in the summary, despite the fact that Student A and Parent A raised the allegations at the XXXXX XX meeting. Parent A asked to submit her own version of the statement.

During the meeting, Parent A asked whether the District had investigated the allegations that Student B sexually harassed Student A. Parent A also asked if she needed to formalize the complaint. The Dean did not provide Parent A with any information about the District's sexual harassment policy and did not answer Parent A's questions about whether the District had addressed the sexual harassment allegations. The Dean repeatedly expressed uncertainty during the meeting as to whether he would have the authority to investigate or discipline a student for a sexual harassment allegation based in full or in part on conduct alleged to have occurred during middle school, even though at that time middle school for Student A had XXXXX XXXXX XXXXX XXXXX XXXXX.

At the XXXXX XX meeting, the Dean directed Parent A to provide him any additional information supporting the sexual harassment allegations. On XXXXX XX, 20XX, Parent A provided the Dean a revised statement summarizing Student A's statements to the Dean at

the XXXXX XX meeting. The statement includes references to general complaints by Student A that Student B had sexually harassed him, as well as specific details including allegations that Student B made comments about Student A's penis. Parent A also provided documents to the Dean, including an email sent to Student A's middle school counselor about Student B slapping Student A and calling him gay.

The Dean completed a Bullying Investigation Form summarizing the bullying investigation and his conclusions. The Dean included no information about any conclusion reached regarding Student A's sexual harassment allegations in the Bullying Investigation Form. The Dean did not provide Complainants or the Superintendent a written report regarding the resolution of the investigation into any allegations of sexual harassment, as is required for sexual harassment investigations under Policy 413.

On XXXXX XX, 20XX, Parent A emailed the Dean to inquire whether he had investigated the allegations of Student B harassing and bullying Student A. The Dean responded the same day to say that a thorough investigation into the incident was launched, but that because of data privacy laws he could not share details regarding the investigation. To date, Parent A has not received a written determination in response to her complaint.

Student A's XXXXX from Chanhassen

Per an agreement signed by Complainants on XXXXX XX, 20XX and by District representatives on XXXXX XX, 20XX, Complainants XXXXX Student A from Chanhassen and agreed that Student A would XXXXX XXXXX XXXXX XXXXXXX XXXXX XXX until XXXXX XX, 20XX. The District agreed to provide Student A XXXXX XXXXX XXXXX, while school was in session, until XXXXX XX, 20XX or until such time as Complainants XXXXX XXXXX XXXXX XXXXXXX XXXXX XXXXX XXXXX XXXXX. Specifically, the District allowed Student A to continue his courses XXXXX XXXXX XXXXX, with his regular classroom teachers providing modified assignments XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and meeting with Student XXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

XXXXX XXXXX

Student A began XXXXX XXXXX with the District on approximately XXXXX XX, 20XX. On XXXXX XX, 20XX, Parent A emailed the Dean to ask whether it would be possible for Student A to finish the school year XXXXX XXXXX XXXXX with Chanhassen and then start the 20XX-XX school year XXXXX XXXXXXX XXXXX at either Chanhassen or Chaska, XXXXX 20XX. Despite language in the agreement stating that the District would provide XXXXX XXXXX XXXXX until XXXXX XX, 20XX, Student A's Chanhassen counselor responded by stating that a student enrolled in Chanhassen can take only one to three XXXXX courses and still be a Chanhassen student, XXXXX XXXXX XXXXX

XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX, XXXXXX XXXXXX
XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX.

Student A continued to have difficulty focusing on and completing assignments during XXXXXX XXXXXX. Parent A told the XXXXXX teacher that Student A would frequently give up when a project did not come easy, and fail to complete it. Parent A also reported to the Dean and Student A's teachers and counselors in XXXXXX 20XX and XXXXXX 20XX that she believed that Student A was beginning assignments and not completing them, or completing them and failing to turn them in; was showing significant difficulty understanding assignments; and was having difficulty getting out of bed in the morning.

As a result of growing concerns with Student A's progress, Complainants decided to obtain an outside evaluation for Student A in XXXXXX, 20XX. Parent A notified the Dean by email that Complainants were having Student A tested and one of Student A's completed one of the forms associated with the evaluation. Student A was evaluated by a private XXXXXX on XXXXXX XX, 20XX.

Although Student A made some progress and earned some high grades in classes completed during the semester, both the Parent and the XXXXXX teacher had to work side by side with Student A during the XXXXXX XXXXXX, reading while he completed answers, in order for Student A to successfully complete tasks. Student A repeatedly told Parent A and the XXXXXX teacher that he had completed tasks that eventually they learned had not been completed. In an email message on XXXXXX XX, 20XX, Parent A expressed her frustration to the XXXXXX instructor that Student A needed an IEP.

On XXXXXX X, 20XX, Student A began attending an XXXXXX XXXXXX school not affiliated with the District, XXXXXX XXXXXX. Upon enrolling, Student A was found eligible for special education services under the category of XXXXXX XXXXXX XXXXXX (XXXXXX). The school created an IEP with goals in the areas of XXXXXX XXXXXX and XXXXXX.

Analysis

Allegation 1

Complainants allege that the District discriminated against Student A on the basis of disability by failing to identify, locate, and evaluate Student A for special education and related services during the 20XX calendar year.

OCR noted that communications between Parent A and the District that occurred prior to the 20XX calendar year, specifically in XXXXXX and XXXXXX 20XX, indicate that Parent A notified the District of Student A's diagnosis and suggested that Student A needed to be evaluated for special education services. While the District disputes receiving the diagnosis, documentation produced by the District contained a copy of the diagnosis. Additionally, Parent A raised concerns about Student A's academic difficulties and opined that an IEP

could have addresses some of these concerns in email correspondence between XXXXX and XXXXX 20XX. It is undisputed that the District did not evaluate Student A for special education or related services prior to Student A's XXXXX from Chanhassen in XXXXX 20XX.

After the XXXXX incident in XXXXX 20XX, Student A started receiving XXXXX services from the District. Student A continued to struggle academically and was evaluated by a private XXXXX in XXXXX 20XX. Also in XXXXX 20XX, Parent A expressed her frustration to the XXXXX instructor that Student A needed an IEP. In XXXXX 20XX, Student A enrolled in a XXXXX school not affiliated with the District. The XXXXX school identified as a student with a disability in need of special education and developed an IEP for Student A. The District has not conducted its own evaluation of Student A.

Prior to the conclusion of OCR's investigation, the District asked to resolve this allegation in accordance with OCR's Case Processing Manual. Subsequent discussions with the District resulted in the District signing the enclosed agreement (Agreement) on January 13, 2017, which, when fully implemented, will resolve the issues in the complaint allegation. The provisions of the Agreement are aligned with the complaint allegation and the information obtained to date during OCR's investigation.

Allegation 2

Complainants also allege that the District discriminated against Student A on the basis of sex when, from approximately XXXXX 20XX to XXXXX 20XX, the District failed to promptly and equitably respond to sex-based harassment of Student A by Student B.

Prior to the conclusion of OCR's investigation, the District asked to resolve the allegation in accordance with OCR's Case Processing Manual. Subsequent discussions with the District resulted in the District signing the enclosed Agreement on January 13, 2017, which, when fully implemented, will resolve the issues in the complaint allegation. The provisions of the Agreement are aligned with the complaint allegation and the information obtained to date during OCR's investigation.

OCR will monitor the District's implementation of the Agreement. We look forward to receiving the initial report confirming the District's implementation of relevant portions of the Agreement as required by the Agreement.

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. Such retaliation may be the basis of another complaint with OCR.

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

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request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We would like to thank you and your staff, and particularly Mr. XXXXX XXXXX, Attorney at Law, for the assistance provided during our investigation and resolution of this complaint.

If you have any questions regarding this letter, please contact Jackie Wernz, Attorney, at 312-730-1486 or jacqueline.wernz@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure