



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

**REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN**

February 13, 2017

Mr. Scott Vance
Superintendent
Morrison CUSD #6
643 Genesee Ave.
Morrison, IL 61270

Re: OCR Docket # 05-16-1461

Dear Mr. Vance:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation and resolved the above-referenced complaint filed against the Morrison Community Unit School District 6 (District) alleging discrimination on the bases of sex XX and disability XX Specifically, the complaint alleges that:

- 1) From XX, the District discriminated against Student A on the basis of sex when District students harassed Student A based on sex and the District, which was aware of the harassment, failed to provide a prompt and equitable response to the harassment; and
- 2) The District discriminated against Student A on the basis of disability when it failed to consider whether she was denied a free appropriate public education (FAPE) when she was bullied by XX.

OCR is 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 prohibits discrimination based upon sex in any educational program or activity operated by a recipient of Federal financial assistance. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 and Title II prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and public entities, respectively. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to the provisions of Title IX, Section 504 and Title II.

Regulatory Authority and Legal Standards

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 on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance. Additionally, the regulation, at 34 C.F.R. §

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

106.31(b)(1)-(4), provides that a recipient may not, on the basis of sex, treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; provide different aid, benefits, or services, or provide aid, benefits, or services in a different manner; deny any person such aid, benefit or service; or subject any person to separate or different rules of behavior, sanctions, or other treatment.

Sexual Harassment

Harassment based on sex that creates a hostile environment is a form of discrimination prohibited by Title IX and its implementing regulation. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or 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. Sex harassment creates a hostile environment when unwelcome conduct based on sex in a recipient's program or activity is sufficiently serious to deny or limit an individual's ability to participate in or benefit from the program or activity. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the individual allegedly subjected to harassment. OCR determines whether conduct constitutes a hostile environment by examining the totality of the circumstances. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved.

Whether the conduct in question is described as "bullying," "hazing," or "teasing," such labels do not determine how a recipient is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. Thus, 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 the event that a recipient limits its response to a specific application of its anti-bullying disciplinary policy, the recipient may fail to properly consider whether the misconduct also results in discriminatory harassment.

Once a recipient has notice of possible sexual harassment of students, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are a recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action. . In all cases, however, the inquiry should be prompt, thorough, and impartial. At the conclusion of a recipient's investigation, both parties must be notified, usually in writing, about the outcome of the complaint, i.e., whether harassment was found to have occurred.

To establish a violation of Title IX under a hostile environment approach, the evidence must establish, based on the totality of the circumstances, that: (1) a hostile environment existed, i.e., harassing conduct on the basis of sex occurred that was sufficiently serious so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or

privileges provided by a recipient; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to address the hostile environment.

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.

Recipient's Response to Address Hostile Environment

If an investigation reveals that harassment created a hostile environment based on sex, then the recipient is required to take immediate and appropriate action reasonably calculated to end the harassment, eliminate any hostile environment that has been created, prevent its recurrence and, where appropriate, remedy the effects of the harassment on the individual(s) subjected to the harassment. The corrective action taken by the recipient should be tailored to the specific situation. A series of escalating responses, including escalating consequences for the harasser, may be necessary if the initial steps are ineffective in stopping harassment. With respect to sex harassment, these duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination.

When taking steps to separate an alleged target of harassment from the alleged perpetrator during and subsequent to an investigation, a recipient should minimize the burden on the alleged victim, and thus should not, as a matter of course, remove the alleged victim from his or her classes while allowing the alleged perpetrator to remain. A recipient 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. In addition to counseling and taking disciplinary action against the harasser(s), effective corrective action may require changes to the recipient's overall services or policies.

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. 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.

Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee

complaints alleging any action that would be prohibited by Title IX, including sexual harassment.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints. However, a recipient's grievance procedures for handling discrimination complaints must meet the Title IX requirement of affording a complainant a prompt and equitable resolution. 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, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other 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 the parties of the outcome of the complaint; and,
- An assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Notice of Nondiscrimination

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 non-discrimination 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

A recipient must include a notice of non-discrimination in each announcement, bulletin, catalog, or application form that it makes available to applicants for employment, students, and others, or which is otherwise used in the recruitment of students.

Bullying and the Denial of a Free Appropriate Public Education (FAPE)

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.

Bullying on any basis of a student with a disability who is receiving disability-related services can result in the denial of FAPE. Accordingly, under Section 504, as part of a recipient's appropriate response to bullying on any basis, the recipient should determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the recipient suspects the student's needs have changed, the recipient must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.

District Policies and Procedures

The District's Board policy 7:10, entitled *Equal Education Opportunities*,¹ prohibits discrimination based on sex against students (similarly, District Board policy 5:10, entitled *Equal Employment Opportunities*, prohibits discrimination based on sex against employees). Under the "Sex Equity" subheading, policy 7:10 specifies "[n]o 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. Any student may file a sex equity complaint by using the Uniform Grievance Procedure." Policy 7:10 does not reference retaliation. Policy 7.10 also states, "[t]he Superintendent shall appoint a Nondiscrimination Coordinator. The Superintendent and Building Principal shall use reasonable measures to inform staff members and students of this policy and grievance procedure."

The District's Board Policy 7:20, entitled *Harassment of Students Prohibited*,² specifically prohibits harassment of students based on sex. Policy 7:20 states, in part, "[a]ny person, including a district employee or agent, or student, engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and/or engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature, imposed on the basis of sex, that ... Has the purpose or effect of ... [s]ubstantially interfering with a student's educational environment; ... [c]reating an intimidating, hostile, or offensive educational environment; ... [d]epriving a student of educational aid, benefits, services, or treatment; or ... [m]aking submission to or rejection of such conduct the basis for academic decisions affecting a student." Policy 7:20 also says, "[e]xamples of sexual harassment include 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." Policy 7:20 also states "[s]tudents who believe they are victims of sexual harassment or have witnessed sexual harassment, are encouraged to discuss the matter with the student Nondiscrimination Coordinator, Building Principal, or a Complaint Manager. Students may choose to report to a person of the student's same sex. Complaints will be kept confidential to the extent possible given the need to investigate. Students who make good faith complaints will not be disciplined. An allegation that one student was sexually harassed by another student shall be referred to the Building Principal, for appropriate action." Policy 7:20 does not reference retaliation.

¹ <https://drive.google.com/open?id=0Byz0VREUVO7rbU5FZDBjWDNGaWc>

² <https://drive.google.com/open?id=0Byz0VREUVO7rc2Z0Yk1SW9JZ2M>

The District's Board Policy 2:260, entitled *Uniform Grievance Procedures*³ (Procedures) state that they may be used for complaints of violation of rights under Title IX against a District employee or agent, however the Procedures do not specify whether they are to be used for Title IX complaints against another student. The Procedures specify that the Nondiscrimination Coordinator also serves as the District's Title IX Coordinator and provide contact information for the Nondiscrimination Coordinator and Complaint Managers, including their names, titles, phone numbers, and mailing and email addresses. The Procedures do not include a specific assurance of an impartial investigation, however they state that "If a formal complaint is filed under this procedure, the Complaint Manager will address the complaint promptly and equitably" and "the Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. The Complaint Manager shall ensure both parties have an equal opportunity to present evidence during an investigation." The Procedures do not include specific provisions for addressing requests for confidentiality, but they specify that the complaint and identity of the Complainant will not be disclosed except: (1) as required by law or the policy, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant. The Procedures do not reference retaliation. The Procedures do not specify steps to protect the Complainant as necessary, including interim steps before final outcome of the District's investigation. The Procedures do not specify that the District will process all complaints of discrimination and harassment regardless of where the conduct occurred to determine whether the conduct occurred in the context of an educational program or had continuing effects on campus or in an off-campus program or activity. The Procedures do not include a prohibition of conflicts of interest (real or perceived) by those handling the procedures. The Procedures do not include written notice of the range of potential remedies and sanctions for violations of Title IX.

The District's Board Policy 7:190, entitled *Student Behavior*,⁴ delineates prohibited student conduct, and a range of disciplinary actions from notifying parents/guardians through expulsion as well as referring certain misconduct to local law enforcement. Among the actions prohibited are "Engaging in. . . any kind of bullying or aggressive behavior that does physical or psychological harm to a staff person or another student. Prohibited conduct specifically includes . . . harassment, sexual harassment, public humiliation, . . . bullying, . . ." The Policy also prohibits students from "[e]ngaging in any sexual activity, including without limitation, offensive touching, sexual harassment, indecent exposure (including mooning) and sexual assault" and "[e]ngaging in bullying, hazing or any kind of aggressive behavior that does physical or psychological harm to a staff person or another student or encouraging other students to engage in such behavior. Prohibited conduct specifically includes, without limitation, . . . sexual harassment." Under the section entitled, "When and Where Conduct Rules Apply," Policy 7:190 states that "a student is subject to disciplinary action for engaging in prohibited student conduct..., whenever the student's conduct is reasonably related to school or school activities, including, but not limited to . . . Anywhere, if the conduct interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including, but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property." In addition, under the section entitled "Prohibited Student Conduct," Policy 7:190

³ <https://drive.google.com/open?id=0Byz0VREUVO7rMIVFaEI5dVRWM28>

⁴ <https://drive.google.com/open?id=0Byz0VREUVO7rN0JhSTN1c0xmRG8>

says prohibited conduct includes “[e]ngaging in any activity, on or off campus, that interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property.”

Policy 7:20 and the Procedures are not referenced or included in the District’s Student Handbook.⁵ Policy 7:10 is included in the Handbook under the heading *Introductory Information and General Notices*. Relevant portions of Policy 7:190 are also included in the Handbook in sections entitled *Prohibited Conduct, Sexual Harassment and Teen Dating Violence Prohibited, and Disciplinary Measures*. A separate document entitled *Behavioral Code* was also provided to OCR, however OCR was unable to locate it on the District’s website. The Behavioral Code includes provisions from Policy 7:190.

The District’s notice of non-discrimination is included at the bottom of each District website page, including its homepage at www.morrisonschools.org. The notice states that the District does not discriminate on the basis of sex, but does not specify that it is required by Title IX not to discriminate in such a manner nor does it specify that questions regarding Title IX may be referred to the District’s Title IX Coordinator or to OCR.

Factual Information

Allegation 1—Sexual Harassment

Alleged Harassment by XX

On XX the Complainant sent an email to the School Principal stating that Student A had been sexually harassed XX. According to the District, this was the first report it received from the Complainant about Student A being harassed XXX. The Complainant’s assertion XX describes conduct that violates the District’s Board Policy 7:20. According to the District, the next day, the School Principal spoke to Student A about the incident, but Student A XX With nothing more to go on, the Principal took no further action regarding the Complainant’s XX report and did not communicate the investigation findings to the Complainant.

On XX, the Complainant again reported that Student A was being bullied and sexually harassed, identifying XX who were harassing her by name. The District Superintendent responded to the Complainant’s email and stated that he would make sure that the appropriate staff thoroughly investigates the alleged conduct. The email included an assurance that the information provided would remain confidential and only be used to complete the investigation.

On XX, the Complainant emailed the Superintendent and requested an update regarding her XX reports of sexual harassment. Specifically, she asked about the consequences given to the accused XX. The Superintendent did not respond to her inquiry regarding the XXX or advise the Complainant as to the District’s determination.

⁵ <https://drive.google.com/open?id=19zYQRrho11Pg5fujB8HPYFesOFKpSQorKs2Ad-cexeg>

On XX, the Complainant emailed the Superintendent and again asked for an update on the outcome of the harassment investigation. In her email, the Complainant noted that XX. XX, the Superintendent emailed the Complainant and stated that he would ask the District counselor to speak with Student A about the incident and he would ask the Principal to investigate the matter. The Superintendent's email stated that XX. According to the District, the Complainant rejected the option of having Student A talk to XX.

According to the District, there were no further reports of sexual harassment involving XX brought by or on behalf of Student A or on behalf of other students. The Complainant informed OCR that she never heard back from the District about XX complaints of sexual harassment against XX.

Alleged Harassment by XX

XXX

Alleged Harassment by XX

XXX

Allegation 2—Disability Discrimination

XX

Resolution

The District requested to resolve the allegations of sex and disability discrimination raised in this complaint prior to the conclusion of OCR's investigation. In accordance with Section 302 of OCR's *Case Processing Manual*⁶, OCR has determined that Allegation 1⁷ and Allegation 2 are appropriate for resolution under Section 302 of the Manual.

The District signed the enclosed Agreement which, when fully implemented, will resolve the sex and disability discrimination issues raised in the complaint allegation. The provisions of the Agreement are aligned with complaint Allegations 1 and 2 and the information obtained during OCR's investigation, and consistent with the applicable regulations. OCR will monitor the District's implementation of the Agreement.

Conclusion

⁶ <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

⁷ The Complainant asserts that the District did not provide her written or verbal notice of the outcome of its determination regarding any of her reports of sexual harassment of Student A. OCR found no evidence indicating the District had communicated its determination to the Complainant. Accordingly, the evidence does not support that the District provided a written decision to the Complainant as required by its Grievance Procedures and Title IX.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

This letter sets forth OCR's determination in an individual OCR complaint and should not be construed to cover any other issue regarding the District's compliance. 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.

If you have any questions regarding this letter, please contact Tamara Perry, Attorney, at 312-730-1510, or Tamara.Perry@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure

cc: Mr. Jeffrey Goelitz, Attorney
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP