



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 29, 2017

Dr. Barbara Eason-Watkins
Superintendent
Michigan City Area Schools
408 South Carroll Ave.
Michigan City, IN 46360

Re: OCR Docket #05-17-1066

Dear Dr. Eason-Watkins:

This is to notify you of the disposition of the above-referenced complaint filed against Michigan City Area Schools (Corporation) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

Specifically, the complaint alleged that:

- (1) during XXXXX, the Corporation subjected a female student (Student A) to discrimination based on sex in that a male student (Student B) harassed her on the basis of sex and the Corporation was aware of the harassment but failed to take prompt and effective action in response; and
- (2) in XXXXX, the Corporation retaliated against Student A's parent and XXXXX (Employee A) for Student A's parent reporting alleged sex discrimination against Student A, when it XXXXX.

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. Title IX prohibits discrimination based upon sex and retaliation in any educational program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the Corporation is subject to Title IX.

During its investigation, OCR reviewed data from the Corporation and the complainant and interviewed Corporation personnel, Student A's parent, and Employee A. Based on its investigation, OCR determined that the Corporation failed to comply with Title IX when it failed to respond adequately to notice of conduct that potentially created a hostile environment based on sex for Student A. OCR also determined that there was insufficient evidence to establish that the Corporation engaged in retaliation as alleged. Prior to the conclusion of OCR's investigation of whether the Corporation had failed to take prompt and effective corrective action to a hostile environment created for Student A and to resolve the violation identified, the Corporation

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

entered into the enclosed Resolution Agreement (Agreement) to resolve the issues in this complaint. The bases for these determinations are set forth below.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states that no individual may, because of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any education program or activity operated by a recipient of Federal financial assistance from the Department.

Hostile Environment Created by Sexual Harassment

Sexual 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, regardless of the sex of the student. 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 so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents.

Nature of the Recipient's Responsibility to Prevent and Address Sexual Harassment

The Title IX regulations establish the following procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment.

- *Respond When It Knows or Should Have Known*

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.

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 or other inquiry reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment if one has been created, prevent the harassment from recurring

and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether or not the student who was harassed makes a complaint or otherwise asked the recipient to take action. If, upon notice, a recipient fails to take prompt and effective corrective action, the recipient's own failure has permitted the student to be subjected to a hostile environment. If so, the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively.

- *Offer Interim Measures*

It may be appropriate for a recipient to take steps to ensure equal access to its programs and activities and to protect either or both parties as necessary, including taking interim measures prior to an investigation or while an investigation is pending. The recipient should take these interim measures promptly once it has notice of the harassment allegation. The individualized interim measures implemented and the process for implementing those measures will vary depending on the facts of each case.

In assessing the need for a party to receive interim measures, a recipient may not rely on fixed rules or operating assumptions that favor one party over another, nor may a recipient make such measures available only to one party. Interim measures should be individualized and appropriate based on the information gathered, making every effort to avoid depriving any student of her or his education. The recipient should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' needs.

- *Immediate and Appropriate Action to Address Retaliation*

When a recipient knows or reasonably should know of possible retaliation, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires recipients to protect against retaliation; at a minimum, this includes making sure that individuals know how to report retaliation, making follow-up inquiries to see if any retaliation or new incidents of harassment have occurred, and responding promptly and appropriately to address any new or continuing concerns.

- *Adopt, Publish and Implement 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 complaints alleging any action that would be prohibited by Title IX, including sex discrimination, sexual violence and other types of sexual harassment. The procedures for addressing and resolving complaints of sex discrimination should be written in language that is easily understood, should be easily located, and should be widely distributed.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the recipient:

- 1) provides notice of the grievance procedures to students and employees of the procedures, including where complaints may be filed;
- 2) applies the procedures to complaints alleging discrimination carried out by other students, employees or third parties;
- 3) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- 4) designates and follows a reasonably prompt timeframe for the major stages of the complaint process;
- 5) notifies the parties of the outcome of the complaint; and
- 6) provides assurance that the recipient will take steps to prevent recurrence of any sex discrimination found to have occurred and to remedy its discriminatory effects on the complainant and others, as appropriate.

There is no fixed time frame under which a recipient must complete a Title IX investigation. OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case. In addition, a recipient should ensure that all designated employees have adequate training as to what conduct constitutes sex discrimination and are able to explain how the grievance procedure operates.

Any rights or opportunities that a recipient makes available to one party during the investigation should be made available to the other party on equal terms.

Once it decides to open an investigation that may lead to disciplinary action against the responding party, a recipient should provide written notice to the responding party of the allegations constituting a potential violation of the school's Title IX policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The reporting and responding parties and appropriate officials must have timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings. The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's nondiscrimination policy.

If all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation and adjudication after receiving full disclosure of the allegations and their options for formal resolution and if a recipient determines that the particular complaint is appropriate for such a process, the recipient may facilitate an informal resolution, including mediation, to assist the parties in reaching a voluntary resolution.

Recipients are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

If a recipient chooses to allow appeals from its decision regarding responsibility and/or disciplinary sanctions, the recipient may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.

Retaliation

The Title IX 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 from retaliating against an individual for the purpose of interfering with any right or privilege secured by the regulation or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, hearing or proceeding under the regulation or opposed any act or policy that is unlawful under the regulation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established: (1) an individual experienced an adverse action caused by the recipient; and (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there was some evidence of a causal connection between the adverse action and the protected activity.

If an inference of unlawful retaliation is raised, OCR will then determine whether the recipient has identified a factually legitimate, non-retaliatory reason for its action, and if so, whether the reason offered is genuine or 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.

Allegation #1

Facts

All Corporation policies are on the Corporation's website.¹

The Corporation's Non-Discrimination Policy 2260 says the Corporation does not discriminate on the basis of sex, identifies the Associate Superintendent as the Corporation's Compliance Officer, and provides his address, telephone number, and e-mail address. It also says, "In addition, students will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights or the Indiana Civil Rights Commission, as well as a concurrent criminal complaint with the law enforcement agency having jurisdiction in the Corporation." The Corporation's Anti-Harassment Policy 5517 (the Policy) says, "It is the policy of the Board of School Trustees to maintain an education and work environment that is free from all forms of unlawful harassment, including sexual harassment, occurring in the Corporation's educational opportunities, programs, and/or activities, or, if initially occurring off Corporation grounds or outside the Corporation's educational opportunities, programs, and activities, affecting the Corporation environment ... This commitment applies to all Corporation operations, programs, and activities." The Policy also says it is a violation of the Policy to retaliate against anyone who made a report or filed a complaint regarding unlawful harassment. The Policy further says, "Bullying rises to the level of unlawful harassment ... when one (1) or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students with the intent to harass, ridicule, humiliate, intimidate or harm that/those student(s), and that bullying is based upon sex, race, color, national origin, religion, or disability, that is, characteristics that are protected by Federal civil rights laws."

The Policy defines sexual harassment and identifies several examples of sexual harassment, including "unwelcome sexual propositions, invitations, solicitations, and flirtations." The Policy indicates that anyone who believes he or she has been subjected to sexual harassment may pursue an informal or a formal complaint. The Policy says the informal complaint process "is designed to provide [individuals] who believe they are being subjected to unlawful harassment ... with a range of options designed to bring about a resolution of their concerns." The Policy says, "If both parties agree, the Compliance Officer may arrange and facilitate a meeting between the individual claiming harassment and the individual accused of harassment to work out a mutual resolution. Such a meeting is not appropriate in circumstances involving sexual violence." The Policy says that if an informal process is not successful or if an individual wishes to proceed directly to the formal complaint procedure, the formal procedure is initiated; this procedure includes an investigation conducted by the Compliance Officer, a written report to the Superintendent with recommendations, a written decision provided by the Superintendent to both parties, and the option of either party to appeal to the School Board. The Policy contains designated timeframes for stages of the investigation and says, "Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received)."

¹ <http://www.neola.com/michigancity-in/>

In the XXXXX school year, Student A and Student B were enrolled as XXXXX at XXXXX (School); the School’s principal indicated that there are XXXXX in the Corporation, including the one at the School.

In contacts with OCR and the Corporation, Student A’s parent identified the following instances of harassment, occurring between XXXXX, of Student A by Student B:

1. On XXXXX, Student B XXXXX during class;
2. On XXXXX, Student B XXXXX during class;
3. In XXXXX, Student B XXXXX on social media, including XXXXX;
4. In XXXXX, Student B XXXXX;
5. On XXXXX, Student B XXXXX;
6. On XXXXX, Student B XXXXX in class;
7. On XXXXX, during a XXXXX and/or during recess, Student B XXXXX;
8. On XXXXX, at XXXXX (a non-school activity), Student B XXXXX;
9. On XXXXX, Student B XXXXX;
10. On XXXXX, Student B XXXXX;
11. In XXXXX, Student B XXXXX; and
12. At the XXXXX ceremony on XXXXX, Student B XXXXX.

Student A’s parent said she advised Student A’s classroom teacher XXXXX, that harassment had been occurring in special classes, such as art, music, and physical education, and the classroom teacher said she would talk to the teachers of those classes. The classroom teacher acknowledged to OCR that the parent reported to her concerns regarding Student B in XXXXX; she said the parent did not report the specific conduct, but said the students had been having issues and asked her to keep an eye on them.

Student A’s parent said she met separately with the principal and counselor the week of XXXXX; she said the counselor characterized the conduct she described as “harassment,” but the principal asked that she handle the matter directly with Student B’s family. The counselor said that Student A’s parent did not report specifically what had been occurring, but merely reported that Student A had been having problems with Student B. The principal wrote in a statement that Student A’s parent reported that week that the students had been having problems and asked the principal what she thought Student A’s parent should do; the principal wrote that since the families were friendly, she suggested that Student A’s parent contact Student B’s parents “as they would want to know what [Student B] was doing.” She also wrote, “I did not feel that I should contact the parents nor talk with the students because she just wanted us to watch what was going on.” The principal told OCR that the parent did not report specifically what had occurred and did not characterize the problems as sexual harassment.

In an e-mail dated XXXXX, to the principal, copied to the counselor and teacher, Student A’s parent noted that she had reported to each of the addressees that Student A had been “having trouble with a student in class harassing her” since XXXXX. In the e-mail, Student A’s parent reported incidents #1 - #2, #4, and #7 and the portions of incident #8 that occurred on XXXXX, and said Student A did not feel comfortable returning to the School until there was a solution for

the “constant harassment.” The principal responded and said she and the teacher believed a meeting was the best way to resolve the issue, so a meeting had been set up the following day that would include the principal, the teacher, Student A’s parent, and Student B’s parent. On XXXXX, Student A’s parent indicated in a follow-up e-mail that she had forgotten to include incident #6 in her timeline and also added the portions of incident #8 that occurred on XXXXX.

The principal, counselor, and teacher met with Student A’s parent and Student B’s parent on XXXXX. With regard to incident #3, Student A’s parent said Student B’s parent reported at the meeting that Student B had XXXXX on social media, but the principal did not ask for details or to see XXXXX; she said she believes they learned of the specific reference to Student A as a XXXXX from one of Student A’s friends at some point. The principal told OCR that Student B’s parent indicated that Student B had said some inappropriate things on “technology,” although he did not specify if this occurred on social media and did not provide details. The principal did not obtain copies of the comments written on “technology”; she said she asked both students’ parents to share any information they had with her, but neither did.

The principal’s narrative said they discussed at this meeting having no contact between the two students and that Student A’s parent refused to discuss the matter but just said Student B should be disciplined. The principal also told OCR that they discussed having a meeting where the students could be present and try to work things out, and Student A’s parent said she would talk to Student A about that. Student A’s parent acknowledged that she did not say much during this meeting, in part because she was XXXXX and did not believe she could speak freely. After the meeting, the principal assigned Student B XXXXX, which she said is equivalent to XXXXX, based on Student B’s parent saying in the meeting that Student B was to blame and had said mean things to Student A.

On XXXXX, Student A’s parent filed a written complaint with the Corporation that referenced incidents #1 - #4 and #6 - #8. With regard to incident #3, the complaint said that Student B’s parent admitted Student B had been XXXXX on electronic devices, but did not contain other details about what exactly was said electronically. The complaint indicated that Student A had been unable to attend school for the past two days due to the harassment and asked that Student B be punished.

The complaint was forwarded to the Associate Superintendent, who was the Corporation’s Compliance Officer at the time but is no longer with the Corporation. On XXXXX, the former Associate Superintendent wrote to Student A’s parent, “After reviewing your complaint and discussing with [the principal], I concur with her recommendation to have a parent/student meeting. I understand that she’s been trying to set that up for a couple of days now. That would seem to be the correct next step given that there are two engaged and concerned parents.” The former Associate Superintendent told OCR that he did not recall why a meeting was determined to be appropriate, but said he thought it may have been because they were trying to determine whether to use the informal or formal process in the Corporation’s anti-harassment procedures; however, he did not recall if he spoke with the parent about using the informal or formal process. Student A’s parent said she was not asked whether she wanted her complaint processed using the informal or formal process.

On XXXXX, the principal sent an e-mail to staff members saying that Student A and Student B “should have as little contact as possible with each other” and informing the staff members to immediately report any problems between the two students to the principal, counselor, or classroom teacher. Student A’s parent said she believed all staff members at the School, not just some, should have been informed about keeping the students apart. The principal said she informed all staff who were in direct supervision of the students and did not want to share more information than necessary with other staff. The classroom teacher told OCR that she was “hyper-vigilant” about keeping the students apart, including by seating them on opposite sides of the room from each other, but that there were occasions when they needed to be in the same group receiving instruction because XXXXX.

The principal sent an e-mail to Student A’s parent XXXXX, confirming a meeting the next day that would include Student A’s parent, Student B’s parent, the principal, the counselor, and, if possible, the classroom teacher. Student A’s parent said that just before the scheduled start of the meeting, she was handed a written statement prepared by Student B and did not have time to respond; therefore, she declined to participate in a meeting that day.

The principal said that she was not able to speak with Student A about the allegations, but that she received the statement from Student B and also spoke with other students, who said both Student A and Student B had made derogatory comments to one another.

On XXXXX, Student A’s parent met with the Superintendent, with Student A and Employee A also present. The Superintendent said that typically the Associate Superintendent would have been responsible for processing the parent’s complaint, but that he was serving as co-principal of another school at the time and had many other duties, so she agreed to meet with the parent.

The parent said she gave the Superintendent Student A’s notes about everything that had occurred, which she said included incident #5 in addition to those referenced in her written complaint. The Superintendent said Student A’s parent described in detail her concerns. She said the concerns raised by the parent were not comments or conduct of a sexual nature, but were characterized by the parent as bullying. She said she believed the situation did not constitute sexual harassment and that she told the parent that there was not a hostile environment. Employee A denied to OCR that the Superintendent had provided any information that could be interpreted as findings with regard to the complaint.

Student A’s parent said Student A was offered the opportunity to switch schools, but she did not wish to do so at XXXXX; she also said Student B should have been moved instead. The principal noted that the information from other students indicated that Student A and Student B had both made comments to one another, but that because Student A’s parent was concerned about the students being together, she was given the option to transfer Student A.

Student A reported incident #9 to the principal on XXXXX, and then sent an e-mail to the principal on XXXXX, to inquire about whether the principal had any follow-up information as a result of her investigation. The principal responded by e-mail that she had talked with the

XXXXX teacher, who indicated that XXXXX and that he did not witness any “malice” or “hear any issues” between the students. Student A’s parent said the principal did not speak to a witness who Student A said had seen what occurred, but only spoke to a friend of Student B. The principal said she did not recall if the parent provided names of witnesses, but said that if the parent did so, the principal would have talked to any witnesses identified.

In an e-mail to the teacher dated XXXXX, Student A’s parent reported incident #10 and said Student A had indicated that the classroom teacher saw and responded to the incident but that it still upset Student A; the classroom teacher responded by e-mail that the incident did not involve Student B, but rather another student who had been XXXXX. The classroom teacher wrote, “Please know that I am doing everything in my power to make this a safe learning environment for all of my students.”

In an e-mail to the principal dated XXXXX, Student A’s parent reported incident #11. The principal replied by asking Student A’s parent to bring Student A in for a meeting to provide additional information about the incident. The principal’s narrative statement indicated that she met with Student A’s parent on XXXXX, and that Student A’s parent refused to provide names of witnesses to incident #11 “because it is over,” but reported incident #12. The principal said the description of the conduct XXXXX was that Student B XXXXX; she said that XXXXX, and there was no need for further follow-up regarding this incident.

Student A’s parent said Student A was very upset about the harassment, so she transferred her to a private school for XXXXX.

Student A’s parent filed a second complaint with the Corporation on XXXXX; in this complaint, she alleged that the Corporation did not follow its policies and procedures in responding to her XXXXX complaint; she provided a timeline of the events and attached a copy of the Corporation’s anti-harassment policy and highlighted provisions she said were not followed, including the requirement that employees who become aware of harassment report it to the Compliance Officer, the requirement to conduct a timely investigation of allegations of harassment that includes interviews with the complainant and relevant witnesses, the requirement that a meeting between the parties occur only “if both parties agree,” the requirement that the Compliance Officer prepare a written report, and the requirement that the Superintendent’s final decision be delivered to the complainant and respondent. On XXXXX, the Associate Superintendent sent Student A’s parent an e-mail indicating that because the complaint alleged that personnel did not follow proper procedures, the matter was turned over to the Corporation’s attorney. By letter dated XXXXX, the attorney indicated that the complaint was filed on XXXXX, and that the Superintendent conveyed the outcome of the investigation in the XXXXX meeting; this letter indicated that the Corporation had followed its bylaws and policies in responding to the XXXXX complaint.

Student A’s parent filed another complaint on XXXXX, alleging that the Corporation had failed to respond to her XXXXX complaint in a timely manner. By letter dated XXXXX, the Corporation’s attorney indicated that Student A’s parent would be provided an opportunity to meet with the School Board on XXXXX, to discuss her concerns regarding Student A. Student

A's parent said she presented information at this meeting. Following the meeting, the Corporation's attorney sent her a letter dated XXXXX, that said the School Board believed the Corporation's administrative team had "acted appropriately in the current situation." The Superintendent said the Corporation viewed the XXXXX complaints not as new complaints, but as a continuation of the previous complaint. She said that although the parent's time to appeal any findings had passed, the School Board allowed her to present her case.

Analysis and Conclusion

The complaint alleged that Student A was subjected to sexual harassment that created a hostile environment for her and that the Corporation failed to respond appropriately. In order to determine whether a hostile environment existed for Student A, OCR would need to conduct additional interviews to establish what had occurred and whether it created a hostile environment for Student A.

The evidence established that Student A's parent complained to the Corporation about the treatment of Student A, which included acts that, if true, could create a hostile environment for Student A based on sex. The evidence established that, after the parent filed a written complaint, the Corporation attempted to set up a meeting between the parents of the two students, contrary to its policy that says a meeting will only be set up if the parties agree. The principal indicated that she attempted to interview Student A but was unable to do so. In addition, the Superintendent said that she relayed the findings of the Corporation's investigation to Student A's parent at the XXXXX meeting, but no written documentation corroborated this, and Employee A denied that any finding was relayed. As the Superintendent explained that she obtained information from Student A's parent about the details of the incidents at this meeting and the parent indicated that at least one incident was detailed only in a written document provided at the meeting, the evidence does not establish that the Corporation conducted a thorough investigation and relayed the findings to the parent at this meeting. The Corporation's own policy specifies that findings will be provided in writing, and this was not done.

Based on the above, OCR determined that the preponderance of the evidence established that the Corporation failed to respond adequately when the parent informed it of conduct that potentially created a hostile environment based on sex for Student A. Therefore, OCR determined that the Corporation violated the Title IX regulation at 34 C.F.R. § 106.8(b).

Allegation #2

Facts

The Corporation's master contract for the job categories of XXXXX contains procedures for periodic evaluations to be conducted by the "appropriate administrator." The contract says the employee receives a written evaluation and has the right to a conference to discuss it; the employee may also submit a written response. The contract contains a form to be used for evaluations, on which the employee and the administrators both rate the employee on a 5-point scale in 13 categories; the form also contains a space for "comments, areas that need

improvement or other concerns.” Finally, the form contains three recommendation options: “Recommend continued employment in present position”; “Recommend probationary status – needed improvements are indicated”; and “Performance is unsatisfactory. Do not recommend further employment.”

Student A’s parent and Employee A were XXXXX. The Corporation provided copies of evaluations of Student A’s parent and Employee A. XXXXX.

On the XXXXX evaluation, Student A’s parent XXXXX. The principal wrote in the comments section, “XXXXX” The principal identified as a recommendation, “XXXXX.”

The principal explained to OCR that Student A’s parent’s ratings XXXXX. The Corporation provided OCR an e-mail dated XXXXX, from the former Associate Superintendent to Corporation principals establishing a consistent standard for a rating in XXXXX. The e-mail also said, “XXXXX” The principal explained that because Student A’s parent XXXXX.

Student A’s parent wrote a formal response disputing XXXXX. She closed the response by writing, “I would like it noted that as of XXXXX, the principal was aware that I was questioning some things with her within our building. I feared retaliation and stated it multiple times. Reviews are given to us at the end of the school year making me call into question a personal issue with this principal.” She noted to OCR that the principal focused on XXXXX.

On the XXXXX evaluation, Employee A XXXXX. The principal wrote in the comments section, “XXXXX” The principal identified as a recommendation, “XXXXX” As with Student A’s parent, the principal noted XXXXX.

The Corporation provided documentation of two other instructional assistants at the School who received ratings of XXXXX, due to XXXXX. The union president indicated that four of seven instructional assistants at the School, including Student A’s parent and Employee A, were XXXXX. The principal said probationary status lasts for 30 days, after which time another evaluation is done and a determination is made whether to terminate the employee, continue the probationary status, or continue the employment.

Employee A XXXXX, and Student A’s parent XXXXX. Student A’s parent said the Corporation discussed XXXXX, but she would still have been XXXXX. She said that because she and the Corporation were still “fighting” about what had happened to Student A, she did not feel XXXXX.

Analysis and Conclusion

OCR determined that Student A’s parent and Employee A experienced adverse actions when they XXXXX. This occurred after Student A’s parent filed a written complaint and expressed verbally to several Corporation employees that she believed Student A had been subjected to harassment, including some acts that were potentially sexual in nature; OCR determined that the complaint and reports were protected activities. Due to the proximity in time, OCR determined

that there was some evidence of a causal connection between the adverse action and the protected activities.

The Corporation offered as the reason for its action that it put into place in XXXXX a rubric that specified XXXXX. The principal explained that XXXXX. The evidence also revealed that two other instructional assistants were treated similarly to Student A's parent and Employee A, in that XXXXX. The other instructional assistants had not engaged in prior protected activity. Accordingly, OCR determined that the reason offered is not a pretext for retaliation.

Based on the above, OCR determined that a preponderance of the evidence does not establish that the Corporation subjected Student A's parent and Employee A to retaliation as alleged.

Overall Conclusion

On November 29, 2017, the Corporation submitted the enclosed Agreement that, when fully implemented, will resolve the issues in these complaints.

The Agreement requires the Corporation to take the following actions:

- develop, provide for OCR's review and approval, and publish a statement to all students, parents and employees in the Corporation at the School that the Corporation does not tolerate harassment on the basis of sex;
- examine the Corporation's Student Code of Conduct to determine whether the current rules of behavior and offense categories appropriately and adequately address violations of the Corporation's policies and procedures prohibiting sexual harassment and revise the Code to the extent necessary to ensure it contains such rules of behavior and offense categories;
- provide effective in-person Title IX training to all staff at the School;
- provide effective training to its Title IX coordinator(s) and designees and all School employees directly involved in receiving, processing, investigating, adjudicating and/or resolving complaints of sexual harassment;
- provide age-appropriate Title IX training for all students at the School;
- complete an impartial investigation to determine whether Student A was subjected to a hostile environment based on sex during the XXXXX school year as a result of another student's conduct toward Student A and/or the Corporation's response to Student A's complaint, including considering whether any off campus incidents created a hostile environment for Student A on campus, and take appropriate action in response;
- should Student A re-enroll in the Corporation in the 2017-2018 school year, take all steps necessary to ensure that Student A is not subjected to a hostile environment on the basis

of sex on Corporation grounds and in Corporation sponsored activities and that any off campus incidents do not create a hostile environment for Student A on campus; and

- submit to OCR for review and approval a record-keeping and data retention policy that ensures the preservation of documentation of its responses to and investigations of sexual harassment and prohibits destruction of records of such reports and complaints, to ensure that the Corporation's data retention policy is consistent with Title IX.

Based on the commitments the Corporation has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this complaint. OCR will monitor the implementation of this Agreement.

This letter sets forth OCR's determination in an individual OCR complaint. It 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 Corporation 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 individual may file another complaint alleging such treatment.

Additionally, 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.

OCR greatly appreciates the ongoing cooperation received from the Corporation during the investigation and resolution of this case. We particularly appreciate the cooperation of Mr. William Kaminski, counsel for the Corporation. If you have any questions, please contact me at 312-730-1611 or by e-mail at Jeffrey.Turnbull@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. William Kaminski