



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

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September 26, 2018

Ms. Callie Jacobs
Superintendent/Director of Schools
Saint Paul Conservatory
for Performing Artists
16 W. 5th St.
St. Paul, MN 55102

Re: OCR Case No. 05-18-1026

Dear Ms. Jacobs:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed with OCR against the Saint Paul Conservatory for Performing Artists (School).

The complaint alleged that the School discriminated against female students on the basis of sex when, between XXXXXXXXXXXXXXX, it failed to respond promptly and equitably to complaints and reports of sexual misconduct by a male School student (Student C) of which the School had notice, thereby creating a sexually hostile environment for students.

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, 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 (FFA). As a recipient of FFA from the Department the School is subject to Title IX. Accordingly, OCR has jurisdiction over this complaint.

Investigation and Finding

During its investigation, OCR interviewed numerous witnesses, including School administrators, School students, and parents of the students. OCR also reviewed information about relevant incidents, including information provided by School students, their parents, and the School.

In making a determination regarding compliance, OCR must often weigh conflicting evidence to determine whether a preponderance of the evidence substantiates an allegation. Based on its investigation, OCR determined using a preponderance of the evidence standard that the School failed to comply with Title IX, at 34 C.F.R. § 106.8(b). OCR found that the School failed to provide a prompt and equitable grievance procedure, both as written and as

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

implemented in this case, that complies with the requirements of Title IX. Prior to OCR making a determination as to whether the District's failure to provide a prompt and equitable grievance procedure as required by Title IX also created a hostile environment for female students, the District agreed to resolve the remaining compliance concerns regarding its Title IX obligations to prevent and address an alleged hostile environment. The reasons for OCR's determination are set forth below.

Background

The School

The School is a public charter school authorized by the University of St. Thomas, St. Paul, Minnesota. During the XXXXXXXXXXXX school year, 374 girls and 127 boys were enrolled in the School, totaling 501 students.

Relevant Students

Students A through E were all tenth grade students at the School at the beginning of the 2017–2018 school year.

School Policies and Procedures

The School has two policies that address discrimination, including harassment and violence, on the basis of sex: Policy 522, *Student Sex Nondiscrimination*, and Policy 413, *Harassment and Violence*. The School's current Policies, which were effective when the conduct occurred and when the complaints were processed, are available on its website.¹

Policy 522, *Student Sex Nondiscrimination*, states that students are protected from discrimination on the basis of sex pursuant to Title IX and state law. The policy's stated purpose is to provide equal educational opportunity for all students and to prohibit discrimination on the basis of sex. The policy states that no student will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any educational program or activity operated by the school on the basis of sex.

Policy 522 designates the Superintendent as the Title IX Coordinator, and provides her name, mailing address, and telephone number. Policy 522 states that the Title IX Coordinator is responsible for coordinating the School's efforts to comply with and carry out the School's responsibilities under Title IX. Policy 522 directs inquiries concerning Title IX to the Title IX Coordinator. The policy also refers inquiries to OCR with contact information. The Superintendent advised OCR that she has been the Title IX Coordinator at the School for eight years.

¹ <https://www.spcpa.org/about/policies/>.

Policy 413, *Harassment and Violence*, prohibits sexual harassment and sexual violence. It provides that sexual harassment may include unwelcome verbal harassment sexually motivated, or inappropriate patting, pinching, or physical contact, and unwelcome sexual behavior or words, or unwelcome behavior or words directed at an individual because of gender. Policy 413 also defines “sexual violence” as “a physical act of aggression or force or the threat thereof which involves the touching of another’s intimate parts,” among other types of conduct. The definition states that “intimate parts” includes the inner thigh, buttocks, or breast, as well as the clothing covering those areas. The policy further indicates that sexual violence may include touching, patting, grabbing, or pinching another person’s intimate parts.

Policy 413 states that the School will investigate all harassment complaints, formal or informal, verbal or written, and will discipline or take other appropriate action against any student, teacher, administrator, or other school personnel who is found to have violated the policy. Policy 413 includes a description of the School’s Title IX complaint procedure. Complainants are directed to report sexual harassment/violence immediately to “a principal,” but notes that no one is prohibited from reporting directly to the Superintendent. However, Policy 413 does not identify the Superintendent as a Title IX Coordinator nor does it reference Policy 522.

Also, any “adult school district personnel” who receives a report of harassment or violence shall inform the principal who must then notify the Superintendent immediately upon receipt of a report, “without screening or investigating the report.” A written statement of the facts will be forwarded as soon as practicable by the principal to the Superintendent; if the report was verbal, the principal must personally reduce it to written form within 24 hours and forward it to the Superintendent. Failure to forward a harassment or violence report or complaint as required may result in disciplinary action against the principal.

Policy 413 requires the Superintendent, within three days of receipt of a report or complaint alleging harassment or violence, to undertake or authorize an investigation.² The Superintendent may authorize School officials or a third party to conduct the investigation.

According to the Superintendent, after she authorizes a sexual harassment investigation she works with the employee designated to conduct the investigation and provides any assistance that is required. For example, with respect to student-on-student harassment, the Superintendent told OCR that she typically delegates the investigation to one or both of the School’s two deans, but that she, the Principal, and the dean(s) work together to develop an investigative plan. The Superintendent stated that after the investigation, the dean(s) report to the Principal, who reports to the Superintendent. The Superintendent, the dean(s) and the Principal then decide how to proceed; that is whether to reach a finding or whether to investigate further.

² Based on OCR’s review, this is the only investigatory timeframe in the policy. The policy contains no process for extending timeframes.

Policy 413 requires the decision maker to consider all the facts and surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred in determining whether alleged conduct constitutes a violation of the policy. Policy 413 says the School will take remedial measures, pending the completion of an investigation, to stop and correct acts of harassment or violence, prevent acts of harassment or violence from recurring, and protect, support, and intervene on behalf of a complainant, student, or other target of the alleged harassment.

Policy 413 procedures require the investigation to be completed “as soon as practicable;” Beyond the three days allowed to start an investigation and the 24 hours within which to reduce verbal reports to writing, Policy 413 does not contain designated timeframes for the major stages of the investigation. When the investigation has been completed, the Superintendent is required to prepare a written report which “shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of the policy.”³ If the Superintendent determines that the respondent has violated the non-discrimination/harassment policy, the “school district” will take appropriate action, which may include warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Policy 413 states that disciplinary consequences “will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior.” Policy 413 does not include any assurance that the institution will take steps to prevent recurrence of harassment and correct its discriminatory effects on the complainant and others, if appropriate.

Policy 413 does not state that the School will provide for an adequate, reliable, and impartial investigation of complaints, including an equal opportunity to present witnesses and relevant evidence. Although Policy 413 explicitly states that the respondent will be given the opportunity to present a defense during the investigation or prior to the imposition of discipline or other remedial responses, it does not explicitly offer similar rights to the complainant. The Superintendent/Title IX Coordinator told OCR that both reporting and responding students are given an opportunity to present evidence, however, typically in an informal conversation with the dean conducting the investigation.

Policy 413 does not specifically provide for any notice to the parties of the outcome of the complaint. Indeed, the policy states that “The school district is not authorized to disclose to a victim private educational or personal data regarding an alleged perpetrator who is a student or employee of the school district,” “School officials will notify the parent(s) or guardian(s) of alleged perpetrators of harassment or violence who have been involved in a reported and confirmed harassment or violence incident of the remedial or disciplinary action taken, to the extent permitted by law.”

³ As to the reports at issue in this OCR complaint, the Superintendent did not prepare a written report setting forth the outcome of the investigation as stated in the written policy.

The Superintendent told OCR that she would not provide a report of the outcome of an investigation (whether the complaint was found to be credible and whether harassment was found to have occurred) to a complaining student as she believes doing so is prohibited under Minnesota law. The Superintendent explained that the School would provide a written notice to a complaining student that it investigated the complaint and “responded appropriately” to all information provided, and considers the matter “closed.” The School’s Counsel confirmed that the School’s practice has been to notify a Title IX complainant that the investigation has been completed, but does not advise the complainant of the outcome of the investigation.

Training

Administration

All School witnesses reported receiving training on sexual harassment, although they could provide little to no specifics of any trainings on the topic they received prior to January 2018.⁴ The Principal stated she recalled receiving some training on Title IX and harassment from the Superintendent prior to January 2018. One of the School’s deans (Dean A) and the Superintendent also reported attending a September 2017 meeting of the School’s Board of Directors at which the Board reviewed Policy 413 and discussed how the policy should be implemented at the school level.

Staff

The School reported that all faculty members receive a copy of a staff handbook the week before students return to school each fall. The handbook, however, does not cover the topic of sexual harassment nor does it discuss the sex harassment complaint procedure or the duty to refer reports of suspected sex harassment to the Title IX Coordinator.

Students

The School reported that the Assistant Academy Director reviewed the student/parent handbook, which the School stated contains information regarding sexual harassment, with students on August 30, 2017.

Factual Summary

XXXXXXXXXXXX Complaint – Student B

On XXXXXXXXXXXX, Student B reported to Dean A by email that Student C was engaging in conduct that was “XXXXXXXXXXXXXXXXXX.” Dean A met with Student B on XXXXX

⁴ Counsel trained administration and staff on January 11, 2018, after this complaint was filed. The School provided OCR materials related to the training. OCR notes that the training states that the Minnesota Government Data Practices Act prohibits the release of “[w]hether allegations were substantiated or not.” OCR also notes that even after the January 2018 training, School witnesses expressed to OCR confusion and misunderstanding regarding aspects of Title IX, as discussed further below.

XXXX. Student B reported to Dean A that since the first day of school Student C had been giving her “XXXXXXXXXXXX” and doing things to make her “XXXXXXXXXXXX.” Student B explained that Student C XXXXXXXXXXXXX to Student B while they were having a conversation, “XXXXXXXXXXXX” and inappropriately, XXXXXXXXXXXXX, XXXXXXXXXXXXX, XXXXXXXXXXXXX, and made “XXXXXXXXXXXX to her like XXXXXXXXXXXXX her and then XXXXXXXXXXXXX. Student B said she had expressed her displeasure with Student C’s actions directly to him—first hinting that she “XXXXXXX” in him and then XXXXXXXXXXXXX, first politely and then “not so politely.” Student B said that Student C’s behaviors not only continued but “XXXXXXXXXX” after she told him to stop. Student B also reported that she had seen Student C engage in similar behavior toward other girls at school, and that those girls also seemed uncomfortable.

Dean A did not consider Student B’s report to be one of sexual harassment because it did not contain reports of any XXXXXXXXXXXXX or XXXXXXXXXXXXX comments, and so she did not initiate a Title IX investigation.⁵ Dean A told Student B to practice setting boundaries with Student C. Student B repeated to Dean A that she had attempted to set boundaries with Student C but that his conduct had only worsened. Dean A also told Student B to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, to report any further conduct by Student C to her teachers or Dean A, and to check in with Dean A over the next one to two weeks. Beyond asking Student B to seek assistance from her teachers, OCR found no evidence indicating that Dean A investigated or otherwise responded to Student B’s report. Dean A said she checked in with Student B frequently through the end of XXXXXX and the beginning of XXXXXXXXXXX after the report and that Student B reported no concerns with Student C. Student B XXXXXXXXXXXXXXXXXXXXX reported to OCR that Dean A did not check in with Student B and said that Student B had to remind her teachers repeatedly about not partnering with Student C because they “couldn’t seem to remember” to keep Student B and Student C separated.

XXXXXX Complaints – Student B, D, and E

On XXXXXXXXXXXXX, two other female students (Students D and E) reported unwelcome conduct by Student C to Dean A. Student D alleged that Student C asked XXXXXXXXXXXXX and became angry and refused to speak to her for weeks when she said no. Student D reported that when Student C began speaking to her again, Student C XXXXXXXXXXXXX, and was very “XXXXXXX even when Student D asked him not to be. Student D reported that approximately one week before XXXXXXXXXXXXX, Student C XXXXXXXXXXXXX. When XXXXXXXXXXXXXXXXXXXXXXX, he XXXXXX and said she XXXXXXX. Student D provided a written statement to the School that said she had seen Student C do similar things “to five separate girls including [herself].”

⁵ Dean A also told OCR she understood that Student C was out of school for an extended absence for professional arts work, and so was both unavailable for an interview and unlikely to have imminent further interactions with Student B.

Student C would not be returning to the School. He received educational services electronically from the School until XXXXXXXXXXXXXXXX, at which point he officially withdrew and enrolled in another school.

Investigation – Additional October Complaints

The School retained outside legal counsel (Associate) to interview the additional students who raised complaints of misconduct against Student C between XXXXXXXXXXXXXXXX.⁷ The Associate also re-interviewed Students B, D, and E regarding their experiences with Student C. The Associate prepared a summary of the interviews, which she provided to the Principal and the Superintendent on or around XXXXXXXXXXXXXXXX.

According to the Superintendent and the Associate Director, the administrative team met and determined that, because the conduct underlying the new allegations occurred prior to Students B, D and E's XXXXXXXXXXXXXXXX reports of sexual harassment, no further discipline would be imposed on Student C. The witnesses explained that the School's discipline policy provides students the opportunity to be informed of and correct misconduct that was the subject of an initial complaint before further discipline is imposed. School witnesses told OCR that at the time the School imposed the initial discipline on Student C, staff had not been aware of the reports that Student C had sexually harassed eight additional girls. School staff also stated that they did not impose the maximum suspension on Student C for the first three complaints made by Students B, D, and E. The Associate Director did speak to the female students' teachers, however, to ensure they were aware of the situation and "would keep all students safe."

The Superintendent told OCR that the School was not able to complete its investigation by interviewing Student C because he stopped attending the School and enrolled in another program prior to the conclusion of the investigation. The Superintendent also stated that the School could not complete its investigation because Student C's attorney had forbidden the School from speaking to Student C about harassment allegations at the XXXXXXXXXXXXXXXX reentry meeting.

The School did not prepare a report summarizing the evidence or making any findings or conclusions regarding the investigation of the additional XXXXXXXX complaints based on the information it was able to obtain. The School did not provide notice to the parties regarding any conclusion of its investigation, it specifically did not provide the general notice required by its policy indicating that the School had investigated the complaint and "responded appropriately" to all information provided, and considered the matter "closed."

School Responses to Climate Issues

⁷ The School also reported the allegations to law enforcement, which conducted its own investigation and did not pursue charges against Student C.

School witnesses reported that to address the climate within the School community after receipt of the numerous allegations of harassment against Student C, they spoke with parents and students about available support from the deans. School witnesses indicated they told teachers to report any students who were having difficulties and that if students needed to speak with the deans they could do so. School witnesses said they felt that the reporting students were aware that the School was taking action on their reports, even if the School could not say what action was being taken because of perceived data privacy concerns.

Parent B denied that the School offered Student B any services regarding the parent's complaints, and specifically denied being told that support services were available. OCR found only one written offer dated XXXXXXXXXXXXXXXX, stating that Dean A was sorry she was not able to meet with Parent B earlier that day and asking if Student B was available the following two days to meet to talk to Dean A.

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that no person may, because of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under 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, which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. In some circumstances, nonsexual touching or conduct may take on sexual connotations and rise to the level of sexual harassment. Conduct does not have to include intent to harm to be sexual harassment under Title IX. 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.

In determining whether a hostile environment has been created, conduct is considered from both a subjective and objective perspective and a variety of related factors are considered to determine if a sexually hostile environment has been created. Relevant factors include the degree to which the conduct affected one or more student's 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 and sex of the alleged harasser and the subject or subjects of the harassment; the size of the school, location of the incidents, and context in which they occurred; and other incidents at the school.

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.

- *Publish Notice of Nondiscrimination*

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its educational programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX Coordinator or to OCR.

- *Designate Knowledgeable Title IX Coordinator*

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law, including any investigation of any complaint communicated to the recipient alleging noncompliance with Title IX or its implementing regulation. The Title IX Coordinator must have knowledge of the requirements of Title IX and of the recipient's own policies and procedures on sex discrimination. If a recipient designates more than one Title IX Coordinator or has more than one employee responsible for Title IX matters, then one coordinator should be designated as having ultimate coordination and oversight responsibility of all complaints to ensure consistent practices and standards in handling complaints. Further, the recipient is required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, email address, and telephone number of the designated employee(s).

- *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 to students, parents of elementary and secondary students, and employees of the grievance procedure, including where complaints may be filed; (2) applies the procedures to complaints

alleging discrimination carried out by employees, other students, or third parties, (3) ensures adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (4) designates and follows reasonably prompt timeframes for the major stages of the complaint process; (5) notifies to 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 providing 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(s). 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), 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 a complaint presents more than a single allegation, a decision should be reached separately as to each allegation.

The specific steps in an investigation will vary depending on 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. However, in all cases the inquiry must be prompt, thorough, and impartial. In some situations, if a recipient knows of isolated

incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.

At the end of an investigation, a recipient should notify the complaining and responding parties of the outcome of its investigation, i.e., whether the complaint was found to be credible and whether or not harassment was found to have occurred.

- *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. A reasonable employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report sexual harassment or other student or employee misconduct to appropriate officials, or who a student reasonably could believe has such authority or responsibility. Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

Once a recipient has notice of possible sexual harassment of a student, 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 the hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether a student or the student's parent has complained or 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.

The required response must include steps tailored to the specific situation, and a series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. 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.

Depending on how widespread the harassment was and whether there have been any prior incidents, a recipient also 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. 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.

- *Offer Interim Measures*

It may be appropriate for a recipient to take interim measures during the investigation of a complaint. In fairly 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 by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education. The Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' needs.

Analysis

OCR finds by a preponderance of the evidence that the School received notice of possible sex harassment on XXXXXXXXXXXXXXXXXXXX, when Student B reported that she was subjected to sex-based XXXXXXXXXXXXXXXXXXXX and XXXXXX from Student C, and Student C persisted even after Student B told him to stop. Moreover, Student B also reported that she had witnessed Student C engage in similar sexually harassing conduct toward other girls at the school. On XXXXXXXXXXXX, the School received additional reports that students Student B, D, and E were being subjected to sexual harassment by Student C. Student B, D and E also reported to School staff that Student C had engaged in similar conduct toward other female students. Finally, the School had notice of complaints of sexual harassment of eight additional students in XXXXXXXX. Accordingly, the School had a duty to take immediate and appropriate action to investigate or otherwise determine what occurred. Additionally, the complaints triggered the School's grievance process that requires a prompt and equitable resolution of the complaints. OCR found that the School failed to provide prompt and equitable responses to such reports with respect to the following:

Neither the Title IX Coordinator nor her designees⁸ followed up on the reports that there were many other female students subjected to similar sexual misconduct. Contrary to its policy, the School did not consider all the facts and surrounding circumstances including past incidents or past or continuing patterns of behavior despite having notice of a pattern of behavior. Rather, the School only responded to Student B, D and E's complaints as to Student C's conduct towards them, the School did not take steps to investigate or respond to their complaints that he had engaged in similar conduct towards other female students which

⁸ OCR has concerns about the Title Coordinator's efforts to comply with and carry out the School's responsibilities under Title IX. Specifically, the Superintendent/Title IX Coordinator did not supervise the investigations of Students B, D, and E's complaints, coordinate the School's response to the complaints, nor adequately identify reports of misconduct as potential reports of sexual harassment.

would have led to a discovery of additional incidents, and did not assess continuing patterns of behavior as required by Title IX and the School's own policy. Accordingly, the School's inadequate response to the complaints may have contributed to additional incidents of harassment. That is, Student B reported Student C's allegedly sexually harassing conduct as early as XXXXXXXXXXXX. Student B indicated that Student C engaged in further harassment after her XXXXXXXXXXXX report and she indicated that she witnessed Student C harass other students in XXXXXXXXXXXX. Additionally, the School bootstrapped the light discipline imposed on Student C when it failed to do an expanded investigation in response to Student B, D and E's reports and then used its failure as justification to not escalate its response when eight female students came forward with additional sex harassment complaints (i.e., the initial response was appropriate as the decision makers did not know about (because they did not follow-up with) additional students before awarding light discipline). OCR further notes that the School did not complete the investigations or provide any resolution to the additional complainants.

OCR also finds that the School's grievance procedures, as written and as applied, fail to comply with the requirements of 34 C.F.R. § 106.8(b). OCR finds that the Policy 413 grievance procedure does not provide for prompt and equitable resolution of student complaints. Specifically, the School's policies do not designate reasonably prompt timeframes for the major stages of the complaint process; do not provide for notification of the parties of the outcome of the complaint; and do not provide 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.

OCR finds sufficient evidence to conclude that the School failed to provide a prompt and equitable resolution to the sex harassment complaints filed by Students, B, D and E and the other female students who filed additional complaints concerning the alleged sexual harassment by Student C. The evidence indicates that the School failed to respond to Students B, D and E's reports that they were aware of many other female students who had experienced similar sexual conduct by Student C, or complete the investigation of or take any additional remedial action in response to claims by additional female students XXXXXXXXthat Student C harassed them. The School did not provide notice of the outcome (whether the complaints were found to be credible and whether sex harassment was found to have occurred) to any of the complainants.

Prior to the conclusion of OCR's investigation, the School expressed an interest in resolving the allegation that the School subjected female students to a sexually hostile environment between XXXXXXXXXXXX when it failed to respond promptly and equitably to complaints and reports of sexual misconduct by a male School student. The evidence gathered to date suggests that the School did not take adequate or appropriate steps to investigation or otherwise determined what occurred upon receiving notice of a potential hostile environment based on sex created by Student C's conduct.

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Conclusion

Based on the information gathered during OCR's investigation, OCR finds that the School failed to comply with Title IX, at 34 C.F.R. §§ 106.31 and 106.8(b), by failing to provide a prompt and equitable grievance procedure, both as written and as implemented in this case, that complied with the requirements of Title IX. On **August 9, 2018**, the Chair of the School's Board of Directors signed the enclosed Resolution Agreement, which when fully implemented, will resolve the compliance issue identified by OCR.

This concludes OCR's investigation of the complaint. This determination letter should not be interpreted to address the School's compliance with any other regulatory provision not addressed in this letter. This letter sets forth OCR's determination in an individual case. This letter is not a formal statement of OCR policy and should not be relied upon, cited or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Please be advised that the School 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 a complaint alleging such treatment. The complainant may have a right to file a private suit whether or not OCR finds a violation of Title IX.

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

If you have any questions, please contact me by phone at 312-730-1560 or by email at ann.cook-graver@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure

cc: Christian Shafer
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