



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 10, 2019

Dr. Allen Bourff
Superintendent
Hamilton Southeastern Schools
13485 Cumberland Rd.
Fishers, IN 46038

Re: OCR # 05-18-1200
OCR # 05-18-1202

Dear Dr. Bourff:

This is to advise you of the resolution by the U.S. Department of Education (Department), Office for Civil Rights (OCR), of the above-referenced complaints filed with OCR on February 20, 2018, against Hamilton Southeastern Schools (Corporation) alleging discrimination on the bases of race and sex.

Specifically, the complaints alleged that during the XXXXXX school year, the Corporation subjected two female students (Students A and B) at Hamilton Southeastern High School (the School) to discrimination based on sex when a male high school student (Student C) sexually harassed Students A and B, and the Corporation had notice of a hostile environment for each but failed to respond appropriately. In addition, complaint #05-18-1200 alleged that the Corporation subjected Student A to discrimination based on race (Hispanic) when it failed to respond appropriately to the sexual harassment by Student C.

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. OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d–2000d-7, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination based on race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the Corporation is subject to these laws.

During its investigation, OCR reviewed data provided by the Corporation and interviewed Student A, Student B, both students' parents, and Corporation personnel. OCR determined that there is insufficient evidence to conclude that the Corporation subjected Student A to discrimination based on race as alleged. Prior to OCR completing its investigation of the allegation of sex discrimination, the Corporation expressed an interest in resolving the allegation under Section 302 of OCR's *Case Processing Manual* (CPM) and OCR determined it was appropriate to resolve the allegation with an agreement.

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

Legal Standards

Sex Discrimination

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity operated by a recipient of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.

In determining whether sexual harassment has created a hostile environment based on sex, OCR looks at the totality of the circumstances and considers a variety of factors, including the degree to which the conduct 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 and sex of the alleged harasser and the subject of the harassment; the size of the school, the location of the incidents, and the context in which they occurred; and other incidents at the school.

Under Title IX, a school has a responsibility to respond promptly and effectively to sexual harassment.¹ This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

Race Discrimination

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color, or national origin under any program that receives Federal financial assistance. The Title VI regulation, at 34 C.F.R. § 100.3(b)(1)(ii), provides that a recipient of Federal financial assistance shall not discriminate against any person on the basis of race, color, or national origin by providing different services, financial aid, or benefits or by providing them in a different manner from those provided to other students.

In determining whether a recipient subjected a student to discrimination on the basis of race, OCR considers whether the recipient treated similarly-situated students differently on the basis of race. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination.

¹ Schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities.

Facts

Complaint #05-18-1200

Student A was a XXXXXX in high school during the XXXXXX school year. Student A's mother (Mother A) informed OCR that Student A reported that Student C, who was a XXXXXX at the School, XXXXXX her off school grounds after the School's homecoming dance in XXXXXX. According to Mother A and statements from a police report regarding the alleged XXXXXX, Student C forced Student A to XXXXXX.

On the morning of XXXXXX, Student A told Mother A and Student A's father (Father A) about the XXXXXX. Mother A reported the XXXXXX to Student A's guidance counselor (Counselor 1) by telephone the same morning, and then went to the School with Father A and met with Counselor 1 in person.

Counselor 1 said Mother A did not name the male student in the initial phone call, but that he contacted Student A's stepmother after being unable to reach Mother A or Father A and suggested Student A and her parents should report the alleged XXXXXX by contacting the local police.

On October 5, during a meeting at the school, Mother A asked the School to make arrangements so that Student A would not have to see Student C. According to Mother A, Counselor 1 refused to adjust Student A's schedule so she would not run into Student C in the hall or common areas of the School. Counselor 1 said that Student A said at the meeting that she and Student C did not have classes or lunch period together and did not see each other in the hallway. Counselor 1 said Student A mentioned that she and Student C were in XXXXXX, but were not in the XXXXXX; however, Mother A noted that they could have XXXXXX together. Mother A said Counselor 1 suggested that Student A XXXXXX because Student C would not XXXXXX voluntarily. Counselor 1 denied telling the family that Student C would not XXXXXX.

According to Counselor 1, Student A's parents said that Student A would be out of school for a few days, so he told them he would reach out to Student A's teachers to ensure Student A could make up any missed work, and he did so by email a short time after the meeting. According to Mother A, Counselor 1 also notified the family that Student A could access counseling services if she needed it, either from him or from a local hospital that contracts to provide school-based therapy at the School. After the meeting, Counselor 1 sent Mother A the form for the school-based therapy via email; Mother A said she learned from this email that Counselor 1 was also a XXXXXX at the School, which concerned her because Student C was on the XXXXXX.

Counselor 1 said that, immediately after the XXXXXX meeting, he informed one of the two deans responsible for underclass students (Dean 1) and the School's Principal about the report. Dean 1 said the Principal and the three school Deans discussed deferring the school's investigation to the law enforcement investigation. The other dean responsible for underclass students (Dean 2) said that Dean 1 noted that he and Counselor 1 had reviewed the students' schedules and determined that there was no interaction between the students in class; the

Corporation did not produce any evidence indicating that staff advised Student C and Student A to avoid interacting with each other (e.g. in the hallway).

Mother A said that during an XXXXXX meeting with School officials she said she requested a XXXXXX. The parties dispute whether they discussed the Corporation's obligations under Title IX at this meeting.

According to Mother A, at some point in the next few days, Student C encountered Student A at lunch and smiled at her, triggering what Mother A characterized as "extreme panic" in Student A. On XXXXXX, Father A met with Counselor 1 and Dean 1 about this encounter. According to the Corporation, Dean 1 and Counselor 1 "assured [Father A] that they would find out why Student C had been in Student A's lunch." Dean 1 said School officials made clear to Student C's teacher that Student C could no longer deviate from his assigned lunch period. According to Father A, School personnel told Father A they would wait for the XXXXXX to take any further action with respect to Student C.

Counselor 1 said that during the XXXXXX conversation, Father A questioned Counselor 1's impartiality due to the fact that he was a XXXXXX and Student C was a member of the XXXXXX. Counselor 1 said he told Father A that his XXXXXX would not affect how he handled the matter, as it had nothing to do with XXXXXX.

On XXXXXX, a XXXXXX. Father A provided a copy of XXXXXX to Dean 1 on XXXXXX.

According to Student A, between XXXXXX and XXXXXX, Student C passed Student A in the hall several times. Mother A said the School's Principal and Assistant Principal refused to meet with them to discuss their concerns. The Principal said he was not aware of any requests by the parents to meet with him.

The School was on break from XXXXXX through XXXXXX. According to the Corporation, on XXXXXX, Student C emailed Dean 1 to ask how the School would deal with XXXXXX. Dean 1 informed Student C that the School would follow directions of law enforcement regarding XXXXXX.

On XXXXXX. According to Mother A, she provided a copy of XXXXXX to Dean 1 and Dean 2 the same day, but the School refused to XXXXXX. According to the Corporation, Dean 1 met with Student A, Father A, and Mother A on XXXXXX, regarding XXXXXX and Student A's educational options. Dean 1 said he referred them to Dean 2, who presented the possibility of Student A transferring to Fishers High School (FHS). Mother A said she asked about Title IX and Dean 2 said she did not know what Title IX was, but Dean 2 denied that Title IX was mentioned in this meeting or that she said she did not know what Title IX was.

Mother A said she felt she had no choice but to request a transfer because of the School's "obvious refusal to ensure [Student A's] safety and well-being" at the School, so she submitted the transfer form the same day. The Corporation says it expedited the transfer because it desired "to accommodate Student A's request." The Corporation reported that Student A attended FHS with "no reports of harassment."

According to Mother A, while they were en route to provide XXXXXX to the School on XXXXXX, Student A received text messages from a School student (Student D) who was a friend of Student C, which referenced a second friend of Student C (Student E), addressed the allegations against Student C, called Student A a liar, and included false statements about Student A's XXXXXX. Dean 1 said he spoke to Student D and her parents and directed Student D not to talk about the situation anymore while at the School. He said he gave a similar directive to Student E, and the Senior Dean said she notified Student E's parents.

According to the Corporation, "Mr. Royal" is an annual talent competition run by the National Honor Society at which senior students present talents and a panel of judges primarily consisting of Corporation personnel votes for a winner. On XXXXXX, Student C was crowned "Mr. Royal." Subsequently, numerous comments and complaints, including reports that Student C XXXXXX female students from the School and XXXXXX and XXXXXX at least one female student, were posted on social media.

Dean 2 said she believes 13 students were interviewed concerning complaints about Student C's alleged XXXXXX and said a female student (Student F) reported XXXXXX by Student C; Dean 2 said Student F said she does not see Student C at the School and felt safe at the School. Dean 2 said she checked in with Student F multiple times thereafter.

The outside counsel who investigated four post Mr. Royal complaints filed with the Corporation interviewed the students, the Principal, and the Senior Dean. The reports in all four cases stated that there was insufficient evidence to conclude that the students had been subjected to XXXXXX.

Sometime after Student A transferred to FHS, the School learned that law enforcement had concluded there was not enough information to XXXXXX. Student A returned to the School in XXXXXX, after Student C had graduated.

Regarding the race discrimination claim, Mother A said that Student A is Puerto Rican and Student C is white. She said she believes this is part of why the School did not respond appropriately. The Corporation says Student A is not identified as Hispanic in any records. As noted in the discussion of complaint #05-18-1202, the Corporation handled the report of similar conduct made by a non-Hispanic female student in a similar manner.

Complaint #05-18-1202

Student B was a XXXXXX in high school during the XXXXXX school year. According to Student B's mother (Mother B), Student C XXXXXX Student B on XXXXXX, at a XXXXXX, forcing her to XXXXXX. Mother B said that Student B did not tell anyone about the XXXXXX before XXXXXX.

On XXXXXX, following the "Mr. Royal" contest, Student B reported to the Senior Dean that Student C had XXXXXX her in XXXXXX. The Senior Dean said she walked with Student B to report XXXXXX to the School Resource Officer. According to Mother B, the Senior Dean asked

upon receiving the report if Student B wanted information on transferring schools and then sent Student B back to class.

Mother B said the police notified Student B’s parents that a report had been made. She said Student B met with a XXXXXX on XXXXXX.

The Corporation says that Student C was absent between XXXXXX and XXXXXX, at the discretion of his family based on the reaction to the “Mr. Royal” contest and the allegations against him. On XXXXXX, Student C returned to classes at the School. Student B’s father (Father B) told the Senior Dean that Student B had seen Student C at the School, and as a result left the School for that day. The Principal said he called Father B the same day and told Father B that the School was aware of his concerns and would be consulting with the police; he said Father B indicated that the family would discuss a plan moving forward.

Also on XXXXXX, Student B emailed the Principal stating that she felt unsafe at the School, noting that she had seen Student C and also referencing unspecified “taunts and threats.” The Principal directed Student B to the guidance office the next morning. Mother B and Student B met with a guidance counselor (Counselor 2) on XXXXXX. Counselor 2 noted that Students B and C did not have classes together but also said that he could not control the hallways. Counselor 2 said he encouraged Student B to take advantage of supports available at the School and provided a pass so she could do so as needed.

According to Mother B, Student B continued to see Student C at the School and had problems as a result. Mother B reported that on or around XXXXXX, which she and Father B took to the School on XXXXXX. The parties dispute whether the Corporation’s Title IX obligations were mentioned at the meeting.

Mother B said that, at the XXXXXX meeting, she and Father B notified the Senior Dean that Student B was running into Student C on her way to study hall and asserted that Student C should be required to adjust his routine to prevent the students from having contact. The Senior Dean’s advice, according to Mother B, was to have Student B wait in the lunchroom for a few minutes before heading to XXXXXX because then she would most likely not run into Student C. Mother B said she believed this to be an unacceptable solution that indicated that Student C was being given more consideration than Student B.

Mother B said Student B was unable to finish school on XXXXXX (when she saw Student C in the hallway) and decided that she wanted to transfer to FHS because she felt the administration did not want to help protect her and that Student C was more important to the School than she was. Mother B contacted the Assistant Superintendent to express disappointment about how her reports and requests were handled and to request that Student B be transferred. The Assistant Superintendent approved the transfer on XXXXXX, and Student B began school at FHS on XXXXXX.

By letter dated XXXXXX, the Chief Equity and Inclusion Officer sent Student B a letter that referenced Student B’s XXXXXX report the previous year and said, “As a new Title IX Coordinator to the district, I would value the time to process the experience with you and learn of

ways to improve our investigative system through your perspective. Since the allegations, the corporation has also revised its procedures for reporting harassment and discrimination. I would like to share our new procedures with you to gain your insight and authentic feedback.” The letter asked Student B to contact her if she was open to a meeting. When Student B did not respond, the Chief Equity and Inclusion Officer sent another letter, dated XXXXXX, reiterating the offer to meet and asking Student B to contact her by XXXXXX, if she wished to meet. Mother B confirmed to OCR on XXXXXX, that Student B had received the letter and was considering whether she wished to meet; the Corporation informed OCR in XXXXXX that Student B did not respond to the Corporation’s letter.

Corporation Policies and Procedures/Training

The Corporation provided documentation in XXXXXX indicating that it had provided training in XXXXXX for personnel responsible for Title IX investigations, including the Title IX Coordinator, on the applicable provisions of Title IX and on investigating sexual harassment complaints.

In XXXXXX, the Corporation also informed OCR that it implemented procedures to ensure that it documents its responses to complaints of harassment, including whether the Corporation provided interim measures, as appropriate, and notice of outcome to the parties.

Analysis and Conclusions

Sex Discrimination

Prior to OCR completing its investigation, the Corporation expressed an interest in resolving the allegation under Section 302 of the CPM and OCR determined that it was appropriate to resolve the allegation with an agreement. Based on its investigation to date, OCR has concerns that the Corporation did not appropriately determine whether a hostile environment existed on campus for Student A and B based on the XXXXXX of each student by Student C, and, if appropriate, provide interim measures to Students A, B, and C.² In addition, OCR has concerns that the Corporation received information from the four complaints and other sources that indicated additional students may have alleged XXXXXX by Student C, but did not appropriately follow up on these reports by determining whether there was on campus impact and interim measures were appropriate for students and Student C.

OCR will monitor the Corporation’s compliance with the Agreement.

Race Discrimination

According to the Corporation, Student A’s records do not indicate that Student A is Hispanic, and OCR found no evidence to establish that the response to Student A’s report was based on race. In particular, the Corporation responded similarly to the report by Student B, a similarly-

² As noted, the Corporation subsequently provided Student B an opportunity to meet with Corporation administrators to address her concerns.

situated student who is not Hispanic. Accordingly, OCR determined that there is insufficient evidence to establish a violation of Title VI.

Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in two OCR cases. 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 in case #05-18-1200 has a right to appeal OCR's determination that there was insufficient evidence to establish a violation of Title VI within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or inaccurate, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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

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 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.

If you have any questions regarding this matter, please do not hesitate to contact me at 312-730-1611 or by email at Jeffrey.Turnbull@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Seamus Boyce