



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

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CHICAGO, IL 60661-4544

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August 22, 2018

Mr. Tony Whitaker
Superintendent
Springs Valley Community Schools
498 S. Larry Bird Blvd.
French Lick, IN 47432

Re: OCR #05-18-1208

Dear Mr. Whitaker:

This is to advise you of the disposition of the above-referenced complaint filed against Springs Valley Community Schools (Corporation) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

Specifically, the complaint alleged the following:

1. in XXXXXX, the Corporation subjected a male middle school student (Student A) enrolled at XXXXXX (the School) to discrimination on the basis of sex when it failed to provide Student A a prompt and equitable grievance process in response to a sexual harassment report made against him by a female student (Student B); and
2. the Corporation failed to designate a responsible employee (Title IX Coordinator) to coordinate the Corporation's compliance with Title IX of the Education Amendments of 1972 (Title IX).

OCR is responsible for enforcing 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. As a recipient of Federal financial assistance from the Department, the Corporation is subject to this law.

During the investigation, OCR reviewed information provided by the complainant and the Corporation and interviewed Corporation personnel, Student A's parents and Student A. Based on the information, OCR determined that the Corporation did not comply with Title IX, as explained below. The Corporation has signed the enclosed Resolution Agreement (Agreement) to address the identified violation with regard to allegation #1, and the Corporation has corrected the violation with regard to allegation #2.

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

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The Title IX Coordinator must have knowledge of the requirements of Title IX and of the recipient's own policies and procedures pertaining to sex discrimination. If a recipient designates more than one Title IX Coordinator, then one coordinator should be designated as having ultimate oversight responsibility. Further, the recipient is required to notify all students and employees of the name (or title), office address, email address, and telephone number of the designated employee(s).

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 sexual harassment. The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed.

In evaluating a recipient's grievance procedures, 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 and employees of the procedures, including where complaints may be filed;
- 2) applies the procedures to complaints alleging discrimination and harassment carried out by other students, employees or third parties;
- 3) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
- 4) designates and follows reasonably prompt timeframes 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 or harassment found to have occurred and to remedy its discriminatory effects, 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.

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 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 sexual misconduct policy. If the complaint presented more than a single allegation, a decision should be reached separately as to each allegation.

The decision-maker must offer each party the same meaningful access to any information that will be used during informal and formal disciplinary meetings and hearings, including the investigation report. The parties should have the opportunity to respond to the report in writing in advance of the decision of responsibility and/or at a hearing to decide responsibility. Any process made available to one party in the adjudication procedure should be made equally available to the other party.

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.

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.

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.

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. The harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. 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, the location of the incidents, and the 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.

A recipient has notice of harassment based on sex if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment or who has the duty to report to appropriate officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, recipients 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 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 asks 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.

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 measures needed by each student may change over time, and 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' evolving needs.

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.

Background

OCR found that while the Board Policies can be found on-line,¹ they are not accessible via a direct link from the Corporation's website. The 2018-2019 Student Handbook is available on the Corporation's website.²

Non Discrimination Policy 2260

The Corporation's Non-Discrimination Policy (Policy 2260) states that equal opportunities are available to all students regardless of sex and that the Corporation does not discriminate on the basis of sex; Policy 2260 references Title IX and also mentions the right to file with OCR, but does not specifically state that Title IX prohibits discrimination based on sex or provide contact information for OCR.³ Policy 2260 designates the High School Principal as the Corporation's "Compliance Officer" to address any complaint of discrimination.

Policy 2260 specifies that informal and formal complaints may be made in writing or verbally to an administrator, the Compliance Officer, the Superintendent, or other Corporation-level official. Student A's parent (Parent A) told OCR, and the Corporation confirmed, that the 2017-2018

¹ <http://neola.com/springsvalley-in/>

² https://docs.google.com/document/d/1HI_jISW5XAO_9J-K9AGoFp7ajy-811BQe2N1p5Ruw/edit#

³ OCR will provide the Corporation will technical assistance regarding the notice of non-discrimination.

Student Handbook incorrectly listed as the Title IX Coordinator the name of a former Superintendent. OCR confirmed that the 2018-2019 Student Handbook now identifies the current Superintendent as the “Title IX Coordinator/Compliance Officer” and the “Anti-Harassment Coordinator/Compliance Officer.” The Superintendent’s name, title, address, telephone number, and email address are provided in the 2018-2019 Student Handbook.

Policy 2260 states, “Parties who are dissatisfied with the results of the informal complaint process may proceed to file a formal complaint ... parties may request that the informal process be terminated at any time to move to the formal complaint process.” Policy 2260 also states that the Compliance Officer, or the designee, will investigate the complaint within 15 days of receipt of the formal complaint and provide the Superintendent a written report that “summarizes the evidence gathered during the investigation and provides recommendations” using a preponderance of evidence standard; the Superintendent will issue a written decision to both the complainant and the respondent within 5 days of receipt of the report of the Compliance Officer. Policy 2260 indicates that the parties may appeal to the Board within five days of the Superintendent's decision. The decision of the Board will be final.

Anti-Harassment Policy 5517

The Corporation also has published an Anti-Harassment Policy (Policy 5517), which defines sexual harassment as “[u]nwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when ...[s]uch conduct has the purpose or effect of interfering with the individual’s educational performance; of creating an intimidating, hostile, or offensive learning environment; or of interfering with one’s ability to participate in or benefit from a class or an educational program or activity.” Policy 5517 provides 11 different examples of conduct that may constitute sexual harassment, including “unwelcomed sexual propositions, invitations, solicitations, and flirtations,” and “sexual violence, including physical and/or sexual assault.”

Policy 5517 encourages students to “promptly report incidents of unlawful harassment to an administrator, supervisor or other Corporation official,” identifies “School Administration” as the “Anti-Harassment Compliance Officers,” provides a telephone number and address for School Administration, and states that the names, titles, and contact information for the Compliance Officers will be published annually in the student handbook and on the Corporation’s website. Policy 5517 includes the Corporation’s procedures for handling informal complaints and investigating formal complaints alleging harassment, which are similar to the procedures under Policy 2260. Policy 5517 states, “A principal will not conduct an investigation unless directed to do so by the Compliance Officer.”

Policy 5517 and Policy 2260 state, “The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person’s pursuit of other remedies, such as the filing of a complaint with the [OCR]... Furthermore, the complaint must be investigated even if a separate investigation is being conducted by another agency, including but not limited to the local police department.” There is no provision in Policy 5517 or Policy 2260 assuring that the Corporation will take steps to prevent a recurrence of any sex discrimination or harassment found to have occurred and to remedy its discriminatory effects, as appropriate.

The 2018-19 Student Handbook

The 2018-2019 Student Handbook does not include grievance procedures for complaints of sex discrimination or harassment but instructs individuals to refer to Policy 5517 for a full explanation of the Corporation’s policies. As noted, Policy 2260 states that the Compliance Officer, or the designee, will investigate the complaint within 15 days of receipt of the formal complaint, but Policy 5517 provides the Compliance Officer with 20 days to investigate the complaint.

The Disciplinary Code

The Corporation’s Disciplinary Code is referenced in the Student Handbook and states that grounds for out of school suspensions include “student misconduct” and “substantial disobedience.” The Handbook also contains a link to the School’s discipline matrix, but sexual harassment is not listed as a separate offense in the matrix; the matrix says the discipline for “bullying/harassment” or for “insubordination/defiance” is a suspension starting only with the third offense. However, the matrix also says, “This listing of misconduct and consequences is not intended to be an all-inclusive list. The schools reserve the right to address any other forms of misconduct and to apply any reasonable consequence in response to misconduct. Moreover, the school reserves the right to apply any level of discipline as school officials may determine.”⁴

Title IX Training

The Corporation indicated that none of the administrators referenced in the policies have been trained on Title IX requirements or investigating reports of sexual harassment.

Facts

During the XXXXXX school year, Student A and Student B were XXXXXX students at the School. The alleged XXXXXX that is the subject of this complaint allegedly occurred in the XXXXXX on XXXXXX. A video surveillance camera captured Student A’s and Student B’s interactions and behavior outside XXXXXX, as well as movements of a teacher, a custodian, and five other students in the time around the alleged incident. There are no cameras in XXXXXX.

According to the School’s Assistant Principal, and as corroborated by his contemporaneous notes, on XXXXXX, a teacher escorted Student B to the Assistant Principal’s office and reported that XXXXXX. Student B admitted that XXXXXX, but explained to the Assistant Principal that earlier that day, Student A told her in front of other students that if she did not XXXXXX, then he would get other students to “pick on her” and make it “bad for her because everyone would believe him and not her.”

⁴ While not referenced in the Student Handbook, Indiana School Code (IN Code § 20-33-8-18) says a principal may not suspend a student before the principal affords the student an opportunity for a meeting during which the student is entitled to a written or an oral statement of the charges against the student. If the student denies the charges, then the student is to be provided “a summary of the evidence against the student,” and an opportunity for the student to explain the student’s conduct.

Student B reported to the Assistant Principal that XXXXXX. Student B stated that she went into XXXXXX and then Student A XXXXXX.

Due to the sensitive nature of the report, the Assistant Principal invited the School's Guidance Counselor (the Counselor) to join the interview of Student B. After the Counselor joined the meeting, Student B stated that while they were XXXXXX, Student A XXXXXX. She said that Student A XXXXXX. During this interview, Student B did not indicate whether XXXXXX.

The same day, the Assistant Principal and the Principal reviewed the surveillance recording of the area outside of XXXXXX, a copy of which was provided to OCR. The recording shows Student A and Student B XXXXXX. Student A XXXXXX multiple times; the last time, he is with another male student (Student C), who waves at Student B and looks at Student A and Student B as he exits the area. Student A immediately goes back XXXXXX, followed by Student B. Student A and Student B remain XXXXXX for the next 20 minutes. During the 20 minutes that Student A and Student B are both XXXXXX, Student C, other male students, and a custodian can be seen walking into XXXXXX. One female student (Student D) can be seen lingering in the area XXXXXX, looking at the entrance to XXXXXX for an extended amount of time, and communicating with Student C when he re-emerges from XXXXXX. During this time, a teacher appears multiple times near XXXXXX. There is nobody around XXXXXX when Student B exits XXXXXX; she does not appear XXXXXX, and the footage does not show the teacher's subsequent encounter with Student B.

After talking to Student B and reviewing the video, the Assistant Principal and the Counselor interviewed Student A. According to the Assistant Principal, Student A initially denied XXXXXX. The Assistant Principal said that, after being advised that the school had a video camera outside XXXXXX, Student A admitted that he XXXXXX, but denied any knowledge of Student B XXXXXX. Next, the Principal, Assistant Principal, and the Counselor met with Student A. According to the Principal, Student A reported that Student B XXXXXX, but he denied talking to Student B XXXXXX. The Assistant Principal told OCR that Student A reported only that XXXXXX. The Principal and the Assistant Principal did not notify Student A during the interviews that Student B had alleged that XXXXXX.

Student A denied to OCR that he XXXXXX and contends that Student B made a false report because XXXXXX.⁵ According to Student A, he went to XXXXXX because XXXXXX. He denied to OCR that he told the Assistant Principal that he had talked to Student B in XXXXXX or that he even knew XXXXXX, but acknowledged entering the area XXXXXX to talk to another female student. Student A also denied to OCR that he admitted to the Principal he was aware Student B had XXXXXX, though he acknowledged to OCR XXXXXX.

According to the Principal, after speaking with Student A, he re-interviewed Student B, along with the Assistant Principal and the Counselor. Student B provided a description of the incident that was consistent with what she had previously reported and described XXXXXX. According

⁵ XXXXXX

to the Principal, he asked Student B if Student A had XXXXXX, and she said he had not. Student B did not report to the School XXXXXX.

According to the Assistant Principal, on the date of the alleged incident, he also interviewed Student C, Student D, and one other male student seen on the video. Student C reported that Student A was “walking in circles” XXXXXX and told him XXXXXX. Student C also admitted talking to Student A, but said he could not recall what they discussed. The other male student agreed that Student A was XXXXXX, but claims they did not talk. Student D said she did not talk to, or see, Student A. The Principal interviewed the School’s custodian, who stated that he was not aware of Student A or Student B XXXXXX. The Corporation did not as part of the investigation interview the teacher who appeared on video multiple times near the restroom area and then escorted Student B to the office.

Corporation officials told OCR that when a student reports XXXXXX, the Corporation reports the incident to XXXXXX and suspends its internal investigation. In this case, following the interviews with the students, the School called XXXXXX to report XXXXXX. The Assistant Principal also called Student B’s parent (Parent B) to report the incident, advise Parent B that the School initiated an investigation (but that XXXXXX), and state that the School would take interim measures to separate the students at school. The Assistant Principal also offered to grant Student B an excused absence from school pending the conclusion of XXXXXX.

According to the Principal, he called Student A’s father to pick up Student A and reported the incident, including stating that XXXXXX. When the father arrived at the School, the Principal notified the father of his decision to assign Student A a XXXXXX, through XXXXXX, pending XXXXXX. During this conversation, the father had Student A XXXXXX. Student A told OCR that Student B probably XXXXXX.

According to the Principal, the Corporation could not “finalize” Student A’s discipline until XXXXXX.⁶ However, according to the Principal, while the School was unable to reach a definitive conclusion as to what happened in XXXXXX, he indicated that based upon the testimony over multiple interviews of the students, the video, and other evidence available, the Corporation believed that Student A’s version was not as credible as Student B’s. The Corporation also believed that Student A had XXXXXX. He said that when making the decision to XXXXXX, the Corporation also considered that Student B was able to XXXXXX, that Student A XXXXXX, and that Student A should not have XXXXXX.

On XXXXXX, the Corporation sent a XXXXXX which indicated that XXXXXX.

On XXXXXX, Parent B contacted the School and reported additional information concerning the XXXXXX incident including that Student A had in fact XXXXXX, and that Student A had previously XXXXXX. The School told OCR that a follow-up XXXXXX was made on the same day. On XXXXXX, Student B, Parent B, and Student B’s grandparent met with the Assistant Principal and the Principal to complete a written statement, which documented the information Student B and Parent B had provided the School on XXXXXX. According to the Principal,

⁶ The Principal said XXXXXX.

Student B’s grandparent did not allow Student B to answer any questions, but said Student B was “scared” to provide the additional information about Student A XXXXXX when she initially was questioned on the date of the incident.

The same day, a XXXXXX and an XXXXXX interviewed Student A and Student B separately and then met with the Principal. According to the Principal, the officials stated that they found no substantial evidence to support XXXXXX, and they recommended he not XXXXXX. Consequently, the School did not re-interview Student A about the information provided earlier that day by Student B or provide Student A an opportunity to submit a written statement.

The Principal told OCR that, after meeting with XXXXXX, he called Student A’s father to indicate that Student A could XXXXXX, on XXXXXX, and that the Corporation had decided to XXXXXX. The Principal told OCR that he did not receive a written report from XXXXXX, and he did not ask about whether or not they had concluded that XXXXXX.

The XXXXXX report completed by XXXXXX indicates that XXXXXX interviewed Student A and Student B and watched the video recording. The Assessment indicates that Student A did not seem truthful and that his account had several inconsistencies and did not match the video, but that Student B XXXXXX. Based on a preponderance of the evidence, therefore, XXXXXX concluded that XXXXXX was unsubstantiated.

Parent A said that since the School XXXXXX, it should have completed the internal investigation regardless of XXXXXX. Parent A told OCR that Student A was not given a proper chance to respond because the School kept changing XXXXXX. Parent A asserted that the School did not have a sufficient basis for XXXXXX. Further, Parent A stated that Student B did not XXXXXX, even though XXXXXX.

According to the Principal, the bases for XXXXXX were that Student A XXXXXX.

On XXXXXX, Student A’s father signed an agreement with the School stating that he agreed to XXXXXX. The Corporation also XXXXXX. Parent A told OCR she did not believe the Corporation should have XXXXXX. OCR found no evidence that the Corporation offered XXXXXX to Student A or Student B during the investigation or thereafter.

The same day, Parent A filed with the Superintendent a formal complaint of discrimination based on sex alleging that the Corporation failed to investigate what happened on XXXXXX, in accordance with the standard set forth by Title IX. The complaint also noted the Corporation’s failure to properly designate a Title IX Coordinator. On XXXXXX, the Corporation’s attorney sent a letter to the parent, notifying her that the Superintendent was the Title IX Coordinator and that the Corporation was not aware that the former Superintendent had been misidentified in the 2017-2018 Handbook. The letter also stated that the Superintendent delegated his investigatory responsibility to the School administrators and that in Student A’s case the Corporation found XXXXXX,⁷ that “[Student A] received due process” and XXXXXX, and that “an incident occurred, an investigation occurred, and both parties were accorded due process.”

⁷ This is XXXXXX.

On XXXXXX, the Principal emailed Parent A, explaining that after XXXXXX concluded there was insufficient evidence to support that XXXXXX, the School responded by XXXXXX. However, he said XXXXXX remained because the Corporation determined XXXXXX. The Principal characterized Student A's actions as XXXXXX. The email did not specify XXXXXX, but the Corporation offered to XXXXXX.

Parent A replied to the Principal's email on XXXXXX, challenging his finding, including that XXXXXX, and maintaining that Student B XXXXXX, just as Student A XXXXXX. Parent A also said the School did not conduct a fair investigation and XXXXXX. There was no further communication between the parties.

XXXXXX

The Principal and the Superintendent acknowledged that they investigated Student B's report XXXXXX, not as a XXXXXX or a XXXXXX. The Principal told OCR that he consulted with the Superintendent when he XXXXXX. The Superintendent said that the Principal briefed him on what he found in his investigation and of the XXXXXX, and that he concurred. The Superintendent told OCR that he has never handled XXXXXX, that reports of XXXXXX are handled by school administrators, and he does not know if they notify him of every report.

OCR noted the Corporation did not have a system to document the evidence gathered in investigations of Title IX complaints.

Analysis and Conclusion

The complaint alleged that the Corporation failed to provide a prompt and equitable grievance process in response to a sexual harassment report. Therefore, OCR reviewed the Corporation's policies and procedures and its response to the report of sexual harassment. The complaint also alleged that the Corporation failed to designate a Title IX Coordinator.

Policies and Procedures

The Corporation has an anti-sex discrimination policy and a separate anti-sexual harassment policy but they are not readily accessible on the Corporation's website. The anti-sex discrimination policy references Title IX but does not state that Title IX prohibits discrimination based on sex or provide contact information for OCR. The Nondiscrimination Policy 2260 and Anti-Harassment Policy 5517 (and the procedures included therein) are inconsistent with each other in that Policy 2260 states that a complaint will be investigated within 15 days of the receipt, but Policy 5517 provides 20 days to investigate the complaint. There is no provision in Policy 2260 or Policy 5517 assuring that the Corporation will take steps to prevent a recurrence of any sex discrimination or harassment found to have occurred and to remedy its discriminatory effects, as appropriate. The 2018-2019 Student Handbook does not include grievance procedures for complaints of sex discrimination or harassment but instructs individuals to refer to Policy 5517 for a full explanation of the Corporation's policies.

Prompt and Equitable Response

OCR has determined that the Corporation failed to comply with Title IX in responding to the alleged sexual harassment of Student B by Student A in this case. The Corporation did not provide an equitable investigation of the complaint. It acknowledged that its Title IX investigator was not trained to analyze and document the available evidence and that it treated the allegation as XXXXXX. The Corporation suspended its investigation following XXXXXX and never determined whether XXXXXX. The Corporation also did not tell Student A what Student B had alleged during the initial interview or provide Student A an opportunity to respond to additional allegations made by Student B, and did not provide Student A the opportunity to provide a written statement, an opportunity it provided to Student B. The Corporation also did not offer interim measures or notice of outcome (whether the complaint was found to be credible and whether XXXXXX occurred) to either Student A or Student B.

Title IX Coordinator

During the XXXXXX school year, the Corporation failed to properly identify its Title IX Coordinator. The Corporation has resolved this allegation by designating the current Superintendent as the Title IX Coordinator for the XXXXXX school year.

Overall Conclusion

The Corporation signed the enclosed Agreement, which, when fully implemented, will fully resolve the issues covered in the complaint. The provisions of the Agreement are aligned with those issues and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

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 an individual OCR 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 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.

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 wishes to thank the Corporation and particularly Ms. Lyn Tucker Fullen, counsel for the Corporation, for the cooperation extended to OCR during the course of this investigation. If you have any questions about this letter, please contact Salina Gamboa, Equal Opportunity Specialist, at (312) 730-1627 or by email at Salina.Gamboa@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Lyn Tucker Fullen