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July 3, 2019

Mailed by U.S. Post and transmitted via email to mpssup@mpls.k12.mn.us and to amy.moore@mpls.k12.mn.us

Mr. Ed Graff
Superintendent
Minneapolis Public School District #1
1250 Broadway Ave.
Minneapolis, MN 55411

Re: OCR Docket No. #05-19-2101
Student A: XXXXXXXXXXXX

Dear Mr. Graff:

This is to advise you of the resolution of the above-referenced complaint filed against Minneapolis Public School District (District), which OCR received on January 8, 2019. Specifically, the complaint alleged that District retaliated against the Complainant's XXXXXX, a Washburn High School student (Student A), from XXXXXXXXXXXXXXXX when it failed to adequately address peer harassment of Student A after she complained in XXXXXXXXXXXXXXXX that a male student was sexually harassing her.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex and retaliation 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 District is subject to Title IX.

During its investigation and prior to OCR issuing a final determination, the District expressed an interest in resolving the allegation under Section 302 of OCR's *Case Processing Manual* (CPM). OCR determined that it was appropriate to resolve the allegation with a resolution agreement. On June 19, 2019, the District signed the enclosed Voluntary Resolution Agreement (VRA), which, when fully implemented, will address the allegation in the complaint. OCR will monitor the implementation of the VRA.

Applicable Legal Standards

Retaliation

Title IX, at 34 C.F.R. § 106.71, incorporates by reference the intimidation and retaliation prohibitions in Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e). The regulation prohibits a recipient from intimidating or retaliating against an individual for the purpose of interfering with any right or privilege secured by the Title IX regulation or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title IX.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. Retaliatory peer harassment does not, by itself, constitute adverse action for purposes of a retaliation claim against the recipient. However, when school officials encourage, tolerate, fail to adequately address, or ignore peer harassment, there is a sufficient nexus to the recipient to support OCR finding of an adverse action. In such a scenario, the peer harassment must be likely to dissuade a reasonable person in the complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR.

Factual Summary

The District's Washburn High School (School) serves students in 9th through 12th grades. Student A was a XXXXX grade student at the School for the 2018-2019 school year. On XXXX, XXXXX, the Complainant notified one of the School's Deans (Dean A) that a female student (Student B) and Student XXXXXXXX (Student C) made harassing comments about Student A. The School responded and concluded that Student C's comments constituted sexual harassment and XXXXXXXX Student C for his conduct.

[illegible][illegible]

XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

On xxxxxxxxxxxxxxxxxxxx, the Complainant contacted one of the School's assistant principals (Assistant Principal A) and mentioned Title IX several times; Assistant Principal A responded that Title IX was not applicable in this situation because Title IX pertains to athletics. Assistant Principal A acknowledged she made the erroneous statement about Title IX to the Complainant. The District required Assistant Principal A to complete an online training module on Title IX. District counsel confirmed that Assistant Principal A successfully completed the training.

On XXXXXXXXXXXXXXXX, the Complainant contacted the District's Director of the Office of Equality and Civil Rights, who is the District's Title IX Coordinator (Coordinator)¹ to report that Student B was continuing to retaliate against Student A. The Coordinator told the Complainant that he would speak with School staff and follow-up with the Complainant.

On XXXXXXXXXXXXXXXX, the Coordinator sent a letter to the School's two assistant principals regarding the Complainant's report. The letter advised the assistant principals that the District has specific guidelines on how to investigate complaints of sexual harassment and retaliation, and they could refer this matter to the Coordinator's office for investigation.

The Coordinator's letter included links to the District's policies 4002² and 5000³. Assistant Principal A reported to OCR that she reviewed the letter and forwarded it to the Principal. The Principal did not contact the Coordinator; instead she forwarded the letter to her supervisor, an Assistant Superintendent, who told her she would handle the situation. The Coordinator reported that no one from the School or District contacted him regarding the Complainant's concerns or his letter, and he did not contact the School thereafter.

On XXXXXXXXXXXXXXXX, the Coordinator told the Complainant that he had notified the School's assistant principals and requested that they explain to the Complainant the steps they were taking to address XXXXXXXX. The Coordinator told the Complainant to contact him if she believed Student A XXXXXXXX or had additional concerns.

The Complainant and Student A reported to OCR that Student A did not XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. On or around XXXXXXXXXXXX, the Principal met with Students XX. The Principal reported that they agreed to XXXXXXXXXXXXXXXXXXXXXXXX, and by XXXXXXXX, XXXX, the Principal changed XX (Student B changed from XXXXXXXXXXXXXXXXXXXXXXXX). Principal A met with Student B and her parents to discuss the agreed resolution; the Principal XXXXXXXXXXXXXXXXXXXXXXXX.

Between XXXXXXXXXXXXXXXX, the Complainant informed the Principal and Assistant Principal A that XX

¹ According to the Coordinator, the Office of Equality and Civil Rights investigates complaints of staff-on-staff and staff-on-student sex-based retaliation and building-level administrators investigate student-on-student sex-based retaliation complaints.

² https://policy.mpls.k12.mn.us/uploads/policy_4002.pdf

³ https://policy.mpls.k12.mn.us/uploads/policy_5000.pdf

XXXXXXXXXXXXXXXXXXXXXXXXXXXX. The Principal investigated the reported conduct. On XXXXXXXXXX, the Principal notified the Complainant by email that the School had investigated her concerns regarding XXXXXXXXXXXXXXXXXXXX from XXXXXXXX through XXXXXXXX and determined there was no XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX The Principal suggested that the Complainant should contact the School Resource Officer or the police as to concerns within their jurisdiction.

In late XXXXXXXX, Student XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXX remainder of the school year. Student XXXXXXXXXXXXXXXX.

Analysis

OCR's investigation established that on XXXXXXXX, the Complainant emailed Dean A to report that Student XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX On XXXXXXXX, the Complainant contacted the Coordinator and reported that Student XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. By letter dated XXXXXXXX, the Coordinator directed the assistant principals to investigate the retaliation complaint in accordance with the District's procedures. District staff met with the parties and XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, but the Complainant later reported that Student XXXXXXXXXXXXXXXXXXXXXXXX.

Prior to the conclusion of OCR's investigation, the District agreed to resolve the allegation by entering into a VRA on June 19, 2019. The VRA includes training for School staff and students regarding the District's prohibition of retaliating against persons for filing complaints of sexual discrimination or harassment complaints or for participating in sexual harassment investigations, and focused remedies for Student A. When fully implemented, the VRA will address the allegation investigated and OCR will monitor the implementation of the VRA. OCR will monitor the District's implementation of the VRA. Please note that the first monitoring deadline is **October 11, 2019**. Because the District agreed to resolve the allegation during the pendency of OCR's investigation, OCR has not determined whether Student B's conduct was likely to dissuade a reasonable person in the complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR.

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

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

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will

seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The Complainant may file a private suite in Federal court, whether or not OCR finds a violation.

Thank you for your assistance and cooperation during OCR's investigation. If you have questions about this letter, you may contact Emily Martin, Senior Equal Opportunity Specialist, at (312) 730-1505 or by email at emily.martin@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

cc: Amy Moore
General Counsel

Enclosure