



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

May 30, 2017

Via U.S. Mail & Email

Carlos M. Gonzalez, Jr.
Superintendent, Zapata County ISD
1302 Glenn Street
Zapata, TX 78076
cgonzalez@zcisd.org

CC: Stephen Trautmann
J. Cruz & Associates, LLC
straumann@jca-law.com

OCR Complaint #06171237
Zapata County Independent School District

Dear Mr. Gonzalez:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Zapata County Independent School District (the District). The complaint alleged the District discriminated against a student (the Student) and other female junior high and high school students in the District on the basis of sex by failing to respond appropriately to complaints of sexual harassment.

OCR is responsible for enforcing Title IX of the Education Amendments Act of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination by recipients of Federal financial assistance from the Department based on sex. Because the District is a recipient of Federal financial assistance from the Department, OCR has jurisdiction to resolve this complaint under Title IX.

OCR opened the following issue for investigation:

Whether the ZCISD discriminated against the Student, and other female junior high and high school students, on the basis of sex by failing to take prompt and effective responsive action to address sexually harassing conduct by other students and/or ZCISD staff members, which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2015-2016 and 2016-2017 school years, in violation of Title IX, at 34 C.F.R. § 106.31.

Legal Standard

Title IX and its implementing regulations prohibit discrimination based on sex. Sexual harassment of students is a form of prohibited sex discrimination. To investigate or otherwise resolve issues of sexual harassment of students, OCR considers whether: (1) the recipient has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) the recipient appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the recipient has taken immediate and effective correction action responsive to any harassment that the investigation determined took place, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

In accordance with the Title IX regulations, each recipient is required to “implement specific and continuing steps to notify . . . students and parents of elementary and secondary school students . . . that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX . . . not to discriminate in such a manner.” 34 C.F.R. § 106.9(a). The Title IX regulations also require that each recipient “adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by [Title IX].” 34 C.F.R. § 106.8(b). Finally, Title IX requires that each recipient “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title IX], including any investigation of any complaint communicated to such recipient alleging its noncompliance with [Title IX] or alleging any actions which would be prohibited by [Title IX].” 34 C.F.R. § 106.8(a). Recipients are further required to notify all of their students and employees of the name, office address, and telephone number of the employee or employees designated as their Title IX Coordinator(s). 34 C.F.R. § 106.8(a).

Regardless of whether the student who was allegedly harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student’s behalf, upon receiving notice of alleged sexual harassment, the recipient must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon 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. If OCR determines that a recipient has responded promptly and appropriately to notice of alleged sexual harassment, OCR will find insufficient evidence of a violation of Title IX.

Investigative Summary

The Complainant alleged that the District failed to respond appropriately to complaints of sexual harassment against middle and high school girls. In response to OCR’s data request, the District provided OCR with its notice of nondiscrimination, notice of its Title IX Coordinator, and its grievance policies and procedures with respect to allegations of sexual harassment. OCR reviewed the District’s Student/Parent Handbook for the 2016-2017 school year, which contains notice that the District does not discriminate on the basis of sex. This notice is also posted on the footer of each page of the District’s website.

The Student/Parent Handbook also includes a section on “Sexual Harassment and Gender-Based Harassment” that defines sexual harassment and provides examples. This section also includes a summary of District policies FFH(LOCAL) and FFH(EXHIBIT), which contain the District’s policies and procedures for investigating complaints of sexual harassment. The Policy designates a Title IX coordinator and provides her phone number and physical office address.

OCR’s review indicated that the District provides notice to students and employees of the procedure, including where complaints may be filed. The Policy expressly applies to harassment of students by employees and by others, including another student. The Policy specifies that complaints of sexual harassment will be investigated by a District official, who may interview individuals with knowledge of the circumstances surrounding the allegations as well as examine other information or documents related to the allegations. The Policy does not guarantee the complaining party nor the accused party the opportunity to give statements, provide evidence, and/or request that the investigator meet with relevant witnesses. The Policy directs the District to take appropriate interim action “calculated to address prohibited conduct or bullying prior to the completion of the District’s investigation.”

Regarding the District’s investigation of the complaints involving the Student, the Complainant told OCR that there were three distinct incidents of sexual harassment of the Student during the spring 2016 semester at [XXXX – to end of paragraph redacted – XXXX].

[XXXX – three paragraphs redacted – XXXX]

Regarding the District’s investigation of allegations of sexual harassment against junior high and high school students other than the Student, the District submitted investigative reports and documentation regarding two investigations involving other students.

Before OCR conducted interviews of District employees or obtained additional data, the District notified OCR of its interest in voluntarily resolving the complaint. OCR’s Case Processing Manual (CPM) Section 302 provides that issues under investigation may be resolved at any time when, prior to the conclusion of OCR’s investigation, the recipient expresses an interest in resolving the issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. On May 8, 2017, OCR approved the District’s request to resolve the complaint prior to the conclusion of OCR’s investigation. The District submitted the attached Resolution Agreement (Agreement) on May 30, 2017, which OCR has determined addresses the allegations in this complaint and which, when fully implemented, will resolve the complaint. The Agreement requires the District to offer counseling services to the Student, revise its Title IX grievance procedures, provide Title IX training for its employees, and make annual reports regarding its handling of sexual harassment allegations for the next two school years.

As of the date of this letter, OCR is closing the investigative stage of this complaint; however, OCR will actively monitor the implementation of the Agreement by the District. If the District fails to implement the Agreement, OCR will resume its investigation of the above issue. This letter is not intended nor should it be construed to cover any matters not specifically addressed herein.

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 have the right to 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 anyone because they have filed a complaint or participated in the complaint resolution process. If this happens, the person may file a 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, it 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 letter, please contact Tyler Clemons, the attorney assigned to this matter, at (214)661-9690 or Tyler.Clemons@ed.gov, or Timothy D. Caum, Supervisory Attorney, at (214)661-9648 or Timothy.Caum@ed.gov.

Sincerely,

/s/
Timothy D. Caum
Supervisory Attorney
Dallas Office