



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

October 11, 2017

XXXXXX XX XXXXXXXXXXX, XXXXXXXXXXX

Mickes O'Toole, LLC
555 Maryville University Drive
Suite 240
St. Louis, Missouri 63141

Re: Carrollton R-VII School District
OCR Case Number: 07-16-1192

Dear XX. XXXXXXXXXXX:

On May 9, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint, against your client, the Carrollton School District (District), Carrollton, Missouri, alleging discrimination on the basis of sex. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleges the District failed to promptly and equitably respond to his report of his daughter's sexual harassment when it failed to properly investigate his sexual harassment complaint.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits 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 District is subject to Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the remainder of this letter, the Complainant's daughter is referred to as "the Student." To protect individuals' privacy, the names of employees, witnesses, and other parties also were not used in the letter.

Legal Standards

Sexually Hostile Environment and Duty to Respond Promptly and Equitably

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides 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 . . . education program or activity” operated by recipients of Federal financial assistance. 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. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it 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. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information.

A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. This includes a review of misconduct that did not occur in the context of an education program or activity but may have had such an impact.

Grievance Procedures and Notice of Nondiscrimination

34 C.F.R. § 106.8(a) requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX. 34 C.F.R. § 106.8(b) requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX.

Finally, 34 C.F.R. § 106.9 requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, 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 any educational program or activity which it operates, and that it is required by

Title IX and its implementing regulation not to discriminate in such a manner. The notice of nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(b)) and, the recipient must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator (34 C.F.R. § 106.8).

Preliminary Investigative Findings

OCR requested copies of District policies and procedures regarding sexual harassment, the District's notice of nondiscrimination, and contact information for the District's Title IX Coordinator. On June 7, 2016, OCR interviewed the Complainant and on January 31, 2017 and February 1, 2017, OCR interviewed the Principal, Counselor, Teacher, Compliance Officer, Instructional Coach, Level II Compliance Officer, and Superintendent. OCR also requested documentation detailing the actions taken to investigate the complaint that the Student was harassed by another student and the District's response. A summary of the relevant information obtained by OCR to date follows:

- The Student attended Carrollton Middle School during the 2015-16 school year and was in the 5th grade.
- On February 29, 2016, the Student's friend informed the Student's teacher that the Student was being harassed by a male student from another class (Student 2). The Student's friend explained that Student 2 was leaving notes in the Student's locker and sending the Student inappropriate verbal messages, which were communicated to the Student through another male student.
- The teacher sent an email to the Counselor, Instructional Coach and the Principal on February 29, 2016, informing them of the situation with the students.
- The Counselor and the Instructional Coach met with the Student and Student 2 separately to determine what occurred. Student 2, who is a student with a disability, was informed he should not have contact with the Student, should not touch the Student and should not make inappropriate comments. Student 2's parents were also contacted.
- During the meeting with the Counselor and the Instructional Coach, the Student was informed that she could switch the classes that she had with Student 2 and move her locker farther away from Student 2 if that would make her feel more comfortable. She declined this offer at the time.
- The Student's mother was contacted and informed of the incident and what actions were being taken by the District. The Complainant was not contacted as his contact information had not been provided to the District and was not in the District's records system.
- On March 8, 2016, the Student requested that she be able to move her locker and switch her classes. Her request was granted that day.

- According to the District staff, Student 2 did not interact with the Student thereafter.
- On May 9, 2016, the Complainant filed a grievance with the District concerning the alleged harassment of the Student. In his grievance, the Complainant stated the District failed to appropriately investigate the alleged sexual harassment of the Student and responded with deliberate indifference to the report of sexual harassment.
- On May 27, 2016, the Compliance Officer issued a letter to the Complainant informing him that after a full investigation she concluded there was insufficient evidence to support the allegation of the grievance.
- On May 27, 2016, the Complainant sent an email to the Compliance Officer stating his disagreement with the decision. The District considered the Complainant's email as his appeal of the Level 1 grievance decision. The District's attorney sent an email to the Complainant identifying the District's Level II Compliance Officer and stating that a written Level II appeal decision would be issued on or before June 14, 2016.
- On June 10, 2016, the Level II Compliance Officer issued findings that he concurred with the decision made by the Level I Compliance Officer. According to the findings, the Level II Compliance Officer reviewed the initial grievance, investigative notes, staff/administration communication about the incident, student records, and the Level 1 investigative findings. The June 10, 2016 determination letter stated the District's administration appropriately responded to the incident, ensured the Student's safety, and ensured the educational process was not disrupted. The Level II Compliance Officer did not recommend any additional action.
- By email dated June 16, 2016, the Complainant requested an appeal of the Level II decision. The District's attorney informed the Complainant on June 22, 2016 that his Level III appeal would be heard by the Board of Education in closed session on July 12, 2016.
- The Board of Education convened on July 12, 2016; however, the Complainant was not present for the meeting.
- The Complainant asserted in a July 19, 2016 email to OCR that the District's attorney misled him and did not give him a time or location for the Level III appeal. He said that the attorney told him it was a closed session and that he could not attend.

OCR reviewed the District's policies and procedures related to the prohibition against sexual harassment and the harassment complaint process as well as the District's notice of nondiscrimination. The District's policy "Prohibition against Discrimination, Harassment, and Retaliation," designates the District's Special Education Director as its Compliance Officer for Title IX and provides a comprehensive list of the Compliance Officer's responsibilities regarding the receipt and investigation of all grievances alleging discrimination and harassment on the basis of sex. The policy outlines the prompt and equitable response the District will use when responding to complaints of discrimination and harassment and includes examples of harassment

and detailed information regarding the process and timeframes for filing complaints of sexual harassment and discrimination.

Prior to the completion of OCR's investigation, the District expressed an interest in engaging in resolution negotiations pursuant to section 302 of OCR's *Case Processing Manual*.¹ On October 11, 2017, the District signed an Agreement (copy enclosed) that, when fully implemented, will address the complaint allegation. The Agreement requires the District to: 1) provide sexual harassment training to Carrollton Middle School administrators, counselors, and teachers; 2) provide training to the District's Middle School administrators and compliance officer on how to conduct an investigation of harassment; 3) provide training to the District's Middle School students regarding the prohibition against sexual harassment; 4) designate a specific counselor for the Student to meet with if she has any concerns about harassment; and 5) offer the Complainant an opportunity to address the District's Board of Education about his concerns. Please consult the Agreement for further details.

OCR considers this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume the investigation.

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 Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Equal Opportunity Specialist, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ Kelli Douglas

Kelli Douglas
Supervisory Attorney

Enclosure

¹ OCR's *Case Processing Manual* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.