



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310  
DENVER, CO 80204-3582

REGION VIII  
ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

November 8, 2017

Jason Archuleta  
Regional Director  
Imagine Prep - Superstition  
1843 W. 16th Ave.  
Apache Junction, Arizona 85120

*Sent by email only to xx*

Re: Imagine Prep - Superstition  
OCR Case Number: 08-17-1003

Dear Regional Director Archuleta:

This is to notify you of the disposition of the above-referenced complaint filed against Imagine Prep – Superstition (School) on October 6, 2016, alleging the School discriminated on the basis of sex.

Specifically, the Complainant alleged that the School failed to provide a prompt and equitable resolution to a sexual assault complaint that she raised on behalf of her daughter (Student).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 and its implementing regulation at 34 Code of Federal Regulations Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education. As a recipient of Federal financial assistance from the Department, the School is subject to Title IX and its implementing regulation. .

During the complaint investigation, OCR reviewed documentation provided by the Complainant and the School and interviewed the Complainant. Prior to the completion of OCR's investigation and prior to OCR making any findings of fact, the School informed OCR that it wished to resolve the complaint allegations pursuant to Section 302 of OCR's *Case Processing Manual (CPM)* ).

**Legal Standards**

*Non-Discrimination Statement*

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 education 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.

*Title IX Coordinator*

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

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

### *Grievance Procedures*

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 and sexual violence. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual violence complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant and the accused a prompt and equitable resolution.

### *Sexual Harassment/Sexual Assault*

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in education programs or activities 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, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program or activity.

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 misconduct; 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, 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; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. For example, a single instance of rape is sufficiently severe to create a hostile environment.

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; and if the conduct occurred, whether a hostile environment existed for the complainant(s) and for others. If an investigation 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, prevent the harassment from recurring and, as appropriate, remedy its effects. These

duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

### **School Policies and Procedures**

#### *Non-Discrimination Notice*

The School's Non-Discrimination notice indicates that the School is "committed to a policy of nondiscrimination in relation to race, color, religion, sex, age, national origin, and disability." The School identifies the Regional Director as its compliance officer, but does not list contact information for regional directors or state that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to OCR.

#### *Sexual Harassment Policy*

The School's sexual harassment policy prohibits "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." The policy provides illustrative examples of sexual harassment. The policy states that anyone who is subject to or knows of an incident of sexual harassment should report it to the compliance officer. The policy outlines possible disciplinary sanctions for both staff and students. The policy states that the School is "committed to investigating each complaint and to taking appropriate action on all confirmed violations of the policy." It requires the compliance officer to issue written findings. The policy also describes the major timeframes of the investigatory process. However, the policy does not contain a prohibition against retaliation. The School also has a "dating abuse" policy that indicates it will respond to allegations of dating abuse, whether they occur on or off-campus.

#### *Grievance Procedures*

The School utilizes universal grievance procedures that may be used to grieve concerns about the educational environment, interpersonal conflicts, employment matters, and complaints of discrimination or harassment. The procedures apply to employees, students, parents, and third-party visitors. The grievance procedures allow a concerned party to follow both grievance procedures and other legal remedies. The procedures also contain both a formal and informal mechanism and specify that individuals are not required to utilize an informal mechanism. The grievance procedures call for a complaint to be submitted to a regional director, who shall conduct an adequate, reliable and impartial investigation into the grievance and issue a written notice of finding within 30 days. The procedures have an appeal process and prohibit retaliation.

### **Factual Background**

xxxxxxxxxxxxxxxx, the Complainant came to the School to enroll the Student in the School for the xxxxxxxx school year, which was to begin on xxxxxxxxxxxxxxxx and during which the Student would

The School ensured that the Student and Student A were not in classes together and informed the Complainant that they did not share classes.

On xxxxxxxxxx, xxxx, the Principal informed the Complainant that the School would initiate a Title IX investigation. The Complainant xxxxxxxx the Student xxxxxxxxxxxxxxxxxx xxx xxxxxxxx, xxxx. The School Network's Regional Director (Regional Director) issued a notice of investigation to both the Student and Student A on xxxxxxxxxx, xxxx. The Notice of Investigation requested that each party contact the Regional Director to schedule an interview. The Regional Director interviewed the Student, but Student A and his mother did not respond to repeated requests by the School to contact the Regional Director to arrange an interview.

## Analysis

[illegible]

During the course of the investigation, before OCR had obtained sufficient evidence to make a finding, the School indicated its desire to voluntarily enter into an agreement to resolve these allegations pursuant to Section 302 of OCR's *CPM*. We reviewed this request and determined that it justified entering into an agreement without completing a full investigation.

On November 7, 2017, we received the School's signed Resolution Agreement (enclosed). When the Agreement is fully implemented, this allegation will have been resolved consistent with the requirements of Title IX and its implementing regulation. We will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the agreement and will promptly require actions to address such deficiencies. If the School fails to implement the Agreement, we will take appropriate action, which may include enforcement actions, as described in the Agreement.

Please be advised that the School 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 Complainant may file another complaint alleging such treatment. In addition, you may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact Patrick Alexander, the attorney assigned to this case, at (303) 844-3473 or by email at [Patrick.Alexander@ed.gov](mailto:Patrick.Alexander@ed.gov).

Sincerely,

Sandra J. Roesti  
Supervisory Attorney

Enclosure: Signed Resolution Agreement

cc: xxxxxxxxxxxx, Counsel, *via email only*