



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 28, 2018

Charlotte Macaluso
Superintendent
Pueblo School District 60
315 West 11th Street
Pueblo, Colorado 81003

Via email only to charlotte.macaluso@pueblocityschools.us

Re: **Pueblo School District 60**
OCR Case Number: 08-17-1103

Dear Superintendent Macaluso:

We write to inform you of the resolution of the above-referenced complaint, filed on December 6, 2016, against Pueblo School District 60 (District), alleging discrimination on the basis of sex. Specifically, the Complainant alleged that the District: (1) failed to provide a prompt and equitable response to reports that her XXX grade grandson (Student 1) was sexually harassed, thus permitting him to be subjected to a hostile environment; (2) failed to provide a prompt and equitable response to reports that her XXX grade granddaughter (Student 2) was sexually harassed, thus permitting her to be subjected to a hostile environment; and (3) failed to provide a prompt and equitable response to reports that her XXX grade grandson (Student 3) was sexually harassed, thus permitting him to be subjected to a hostile environment. OCR investigated these issues and also reviewed the District's Title IX policies and procedures.

I. Jurisdiction

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity that receives Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to the requirements of Title IX. Additional information about the laws OCR enforces can be found at www.ed.gov/ocr.

II. Procedural History

OCR formally notified the District of the complaint by a letter dated June 22, 2017. We issued a data request with the notification letter, and received the District's initial response on July 25, 2017. We received additional data from the District on August 1, 2017. We interviewed the Complainant prior to initiating the investigation. We also spoke with District administration and staff on April 24, 2018.

OCR applies a preponderance of the evidence standard to determine whether the evidence gathered during an investigation is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

Our investigation found insufficient evidence to establish that the District discriminated against Student 3 as alleged. Before OCR had sufficient evidence to make a determination regarding the remaining allegations, the District expressed an interest in taking voluntary action to resolve them. We determined that voluntary resolution pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) was appropriate. Subsequently, the District voluntarily entered into a resolution agreement (Agreement) to fully resolve this complaint. A signed copy of the Agreement is attached.

III. Title IX Procedural Requirements

a. Relevant Legal Standards

The regulations implementing Title IX, at 34 C.F.R. § 106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. Under Title IX and its implementing regulations, the District is responsible for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of a student's ability to participate in or receive education benefits, services, or opportunities.

i. Notice of Nondiscrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a school district 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 school district that they do not discriminate on the basis of sex in their education programs or activities, and that they are 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 a school district's Title IX Coordinator or to OCR.

ii. Title IX Coordinator

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires a school district to designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX. This regulation also requires a school district to notify all students and employees of the name or title, office address, and telephone number of the designated employee(s). A school district must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.

iii. Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires a school district to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault.

Title IX does not require school districts to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A school district 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 a prompt and equitable resolution.

To evaluate whether a school district's grievance procedures are prompt and equitable, OCR reviews all aspects of a school district's policies and practices, including the following elements that are critical to achieve compliance with Title IX: (a) notice to students, parents of elementary and secondary students, and employees of the procedures, including where complaints may be filed; (b) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties; (c) provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence; (d) designated and reasonably prompt timeframes for the major stages of the complaint process;¹ (e) notice to both parties of the outcome of the complaint; and (f) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

b. Investigative Findings and Analysis

During the course of the investigation, before OCR had obtained sufficient evidence to make a finding with respect to the procedural requirements of Title IX, the District indicated its desire to voluntarily enter into an agreement to resolve this issue 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.

IV. Response to Reports and Hostile Environment

a. Relevant Legal Standards

The regulation implementing Title IX, at 34 C.F.R. §106.31(a), 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 a recipient of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. It may be appropriate for a school to take interim measures during the investigation of a

¹ OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct.

complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. If appropriate, the recipient should undertake these steps promptly once it has notice of a sexual harassment allegation.

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 lesser need to show a repetitive series of incidents.

Under Title IX, a recipient must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity. Further, once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment; and if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct.

b. Investigative Findings and Analysis

i. *Student 1 and Student 2*

During the course of the investigation, before OCR had obtained sufficient evidence to make findings with respect to the District's response to reports that Student 1 and Student 2 had experienced sexual harassment, the District indicated its desire to voluntarily enter into an agreement to resolve these issues 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.

ii. *Student 3*

At the start of the 2016-2017 school year, Student 3 enrolled at School A as XXX grade student. Student 3 did not have any disciplinary incidents throughout the school year, but the District reported that he struggled to get to class. Consequently, the District's truancy officer contacted Student 3 on September 16, 2016 to discuss the District's truancy policy.

The District reported being unaware of any concerns related to Student 3. However, the District shared that Student 3 had a strong relationship with one of the counselors (Counselor A) at School A and spoke with her on multiple occasions XXX XXX XXX. The District shared that Student 3 had a particularly strong relationship with a Positive Behavior Intervention Support Specialist (PBIS Specialist) and spoke with her often about XXX XXX, but he did not report being called names.

The PBIS Specialist recalled that on November 7, 2016, Student 3 came to her because he was upset that he had missed the application deadline and mandatory meetings required for participation in a

PBIS group. The District reported that the PBIS Specialist encouraged Student 3 to get involved with an alternative activity, but Student 3 decided that he did not wish to do so.

On March 16, 2017, the Complainant notified School A that Student 3 had been bullied by one of his classmates, Student 4. One of School A's assistant principals (Assistant Principal A) met with Student 3 on March 17, 2017 to discuss the Complainant's report. According to notes taken by Assistant Principal A during that meeting, Student 3 reported that Student 4 had not bothered him at school and that he doesn't see Student 4.

None of the four School A employees that OCR spoke with had any recollection of Student 3 reporting bullying during the 2016-2017 school year. The Principal at School A told OCR that occasionally, during unstructured times such as lunch, Student 3 would tell her that kids were being stupid or dumb, but even when she asked him for names and details of what was happening, he never disclosed specific information.

The Complainant alleged that the District failed to provide a prompt and equitable response to reports that Student 3 was sexually harassed, thus permitting him to be subjected to a hostile environment.

As explained above, the individuals responsible for responding to concerns regarding harassment at School A did not have any recollection of Student 3 reporting harassment or bullying during the 2016-2017 school year. OCR determined that School A promptly responded to the Complainant's single report regarding a potential conflict between Student 3 and a classmate. When School A responded, less than 24 hours after receiving the Complainant's report, Student 3 denied that he had any issues with the classmate. Therefore, OCR did not find sufficient evidence to support this allegation.

V. Conclusion

On September 19, 2018, we received the District's signed Resolution Agreement.

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will provide the District with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. We will provide the Complainant with a copy of OCR's monitoring letters. The monitoring phase will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title IX and its implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, copied to the Complainant, stating that this case is closed. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This resolution letter issued by OCR addresses an individual OCR case. Resolution letters contain fact-specific investigative findings and dispositions of individual cases; they are not formal statements of OCR policy and they 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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. 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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for your attention to this matter, the District's cooperation, and counsel's assistance. If you have any questions, please contact Allison Morris, the attorney assigned to the case, at XXX or XXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Resolution Agreement

CC *via email*: Coulter Bump, Esq., Attorney for the District
Dr. Katy Anthes, Colorado Commissioner of Education