



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 21, 2020

Director Kathy Sandoval-Snider
Albuquerque Institute for Mathematics and Science
933 Bradbury SE
Albuquerque, NM 87106

Via email only to ksandoval@aims-unm.org

Re: Albuquerque Institute for Mathematics and Science
OCR Case Number: 08-18-1386

Dear Kathy Sandoval-Snider:

This letter is to notify you of the disposition of the above-referenced complaint, filed with the U.S. Department of Education's Office for Civil Rights (OCR) on March 14, 2018, alleging Albuquerque Institute for Mathematics and Science (Institute) discriminated on the bases of sex and disability.

Specifically, the complaint alleged the Institute: (1) failed to respond appropriately to sexual harassment; (2) subjects students to a hostile environment on the basis of disability; (3) failed to designate a Title IX coordinator, and (4) failed to adopt effective Title IX grievance procedures.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department); and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities; and Title IX of the Education Amendments of 1972, 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 education programs and activities that receive Federal financial assistance from the Department.¹ As a recipient of Federal financial assistance from the Department and a public entity, the Institute is subject to these laws and regulations.

During the investigation, OCR reviewed information provided by the Complainant and the Institute. OCR also interviewed the Complainant and Institute staff. OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to

¹An amended Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, the Title IX regulation in effect at the time of the underlying events associated with the above-referenced complaint serves as the basis for OCR's determination in this matter, which is available [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

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.

OCR determined that it required consent of the parent(s)/guardian(s) of the affected students to further investigate allegation 1 and that there was insufficient evidence to support allegation 2. Regarding allegations 3 and 4, we found a preponderance of evidence to support the allegations. Upon being advised of the violation finding, the Institute entered into a Resolution Agreement (Agreement) to resolve the matter. A signed copy of the Agreement is attached with this letter. The reasons for our conclusions are set forth in this letter.

DISCUSSION

The Institute is a state-sponsored charter school in New Mexico serving students in grades 6-12. It sits on the University of New Mexico campus, but is not operated by the University.

(1) Sexual Harassment Allegation

The Complaint alleged that on April 27, 2018, several female students approached the Institute's Director to report that a male student was sexually harassing them by making repeated requests through a social media website or app for explicit photographs.

During an interview with OCR, the Complainant stated that there were four female students who were allegedly harassed by the male student through Snapchat. The Complainant told OCR that the Director refused to investigate the allegations and emailed the Institute Community, including parents, stating that "there was nothing the [Institute] could do" and advising the parents to contact the police.

OCR initially considered whether the Complainant's allegations should be treated as a class allegation, but later learned that the circumstances were specific to the four students identified by the Complainant. OCR informed the Complainant that to further investigate this allegation OCR would require consent from a parent/guardian of an impacted student. The Complainant acknowledged this request and did not provide contact information for any parent/guardian. Therefore, OCR determined that this allegation must be dismissed pursuant to Section 108(e) of the *Case Processing Manual*.

(2) Disability Harassment Allegation

In addition, the Complainant asserted that a teacher (Teacher) routinely calls kids "retards." The Complainant did not assert that the Teacher directed the slur toward a specific student or that there were students with disabilities in the Teacher's classroom but instead reported that the Teacher used the term generally. The Complainant did not assert that any student had complained about the Teacher's use of the slur.

OCR interviewed two Institute staff (or former staff) who were named by the Complainant as witnesses. Both witnesses corroborated the Complainant's assertion that the Teacher used a

disability-related slur. The witnesses both acknowledged that the Teacher did not direct the slur at particular students and that they were unaware of any specific complaint made by a student or parent about the Teacher.

Disability harassment under Section 504 is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

In analyzing claims of disability harassment, OCR considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.* whether the harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on disability. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. When harassing conduct is sufficiently serious that it creates a hostile environment, it can violate a student's rights.

Neither the Complainant, nor the teachers that he named as witnesses, could identify a student who was impacted by the alleged disability harassment by the Teacher. Further, the information gathered during the investigation does not show that any student or parent contacted the Institute about the Teacher's conduct.

While the Teacher's alleged use of a disability-related slur may be objectionable, there is insufficient evidence for OCR to conclude that the Teacher's conduct limited or denied any student's ability to participate in or benefit from an educational institution's programs or activities or otherwise created a hostile environment.

Therefore, OCR finds that the evidence does not support a conclusion that the Institute discriminated as alleged and is closing allegation 2 pursuant to Section 303(a) of the *Case Processing Manual* effective the date of this letter.

(3) Title IX Coordinator Allegation

Next, the Complainant alleged that the Institute was not in compliance with Title IX because it did not have a properly designated Title IX Coordinator.

In response to OCR's request for documents relating to the designation of a Title IX coordinator, the Institute provided various Board policies and procedural directives. None of the procedural directives name a Title IX Coordinator or provide contact information. However, the Director is named as the "Compliance Officer" for procedural directives relating to sexual harassment.

The procedural directive regarding sexual harassment states:

Any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination by an agent or employee of the Institute [sic] who knows of such discrimination against another person should file a complaint with the Director.

At the time the Complaint was filed, 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).

Neither the Institute's webpage nor its Board policies identify its Title IX Coordinator. The Institute's previous Student Handbook identifies the Director as the Title IX Coordinator but does not provide contact information. In addition, the Board policies refer to the Director as the "Compliance Officer." The Institute's current Student Handbook does not identify a Title IX Coordinator. In addition, both the previous and current Student Handbooks directs the Institute community to report incidents to entities other than the Title IX Coordinator, including entities such as an Assistant Superintendent and the OEOS, neither of which are parts of the Institute.

Because the Institute's policy manuals are not widely available and because they are inconsistent in their description of the appropriate person to respond to Title IX Complaints, OCR concludes the Institute has not adequately identified its Title IX Coordinator and is in violation of 34 C.F.R. § 106.8(a).

(4) Title IX Grievance Procedures Allegation

Finally, the Complainant alleged that the Institute had not adopted effective Title IX grievance procedures.

In response to this allegation, the Institute provided OCR the following:

- 1) A copy of the Institute's 2016-2019 Student Handbook;
- 2) A copy of the Institute's 2017-18 Student Agenda;
- 3) A copy of the Institute's Employee Handbook;
- 4) Excerpt from the Institute's Board Policy Manual concerning complaint policies;
- 5) The Institute's Certification to New Mexico Public Education Department regarding Title IX athletics;
- 6) A copy of the Institute's bullying reporting form.

In addition, in the summer 2020, the Institute provided a copy of its 2019-20 Student Handbook.

OCR noted that the Institute's web page does not contain any publicly accessible information regarding its Title IX Coordinator or Title IX policies and procedures.²

² <http://www.aims-unm.org/> (last visited September 11, 2020)

The Institute's complaint policies, provided from its Board Manual, contain a general complaint policy with procedural directives for:

- (1) Complaints about personnel;
- (2) Complaints about facilities and services;
- (3) Student Concerns, Complaints, and Grievances;
- (4) Equal Employment Opportunity;
- (5) Sexual Harassment;
- (6) Equal Education Opportunities; and
- (7) Nondiscrimination/Equal Opportunity.

The procedural directive regarding sexual harassment states:

Any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination by an agent or employee of the Institute [sic] who knows of such discrimination against another person should file a complaint with the Director.

The procedural directive does not describe any prohibited conduct.

The procedural directive states further that the Institute is "committed to investigating each complaint and to taking appropriate action on all confirmed violations of policy." It names the Director as the person to investigate and document complaints but does not contain any description of the investigatory process, other than to state that the Director "will maintain confidentiality to the extent reasonably possible."

The procedural directive states that complaints are to be made within 30 days from the date the complainant knows or should have known about the grounds for filing a complaint. The procedural directive instructs complainants to utilize "forms provided in the policy," however the information provided by the Institute contains no such forms.³ The procedural directive states that the Director should "respond" within 10 days to the complaining party but does not direct the time frame in which the Director should complete an investigation.

Neither the Equal Education Opportunities procedural directive nor the Nondiscrimination/Equal Opportunity contain any additional information regarding definitions, investigatory process, or timeframes.

The Institute's 2016-2019 Student Handbook contains a section dedicated to Title IX, which contains a subsection regarding sexual harassment. The Student Handbook identifies the Director as the Title IX Coordinator.

The 2016-2019 Student Handbook states that sexual harassment is a violation of federal law, Institute Board policy, Institute procedural directives and school policy. It states further that

³ The Institute provided a template of a form to report bullying available through its parent portal. The form contained one box with the heading "name calling or mean comments, or gestures with a sexual meaning." No form available to students was provided.

sexual harassment includes sexual advances, requests for sexual favors, and written or verbal conduct of a sexual nature. It states that sexual harassment is considered to have occurred when:

- Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of the academic status of a student or obtaining an education;
- Submission to or rejection of that conduct or communication by an individual is used as a factor, which affects the academic standing or education of a student;
- That conduct or communication has the purpose or effect of substantially or unreasonably interfering with the education of a student or creates an intimidating, hostile or offensive educational environment.

The 2016-19 Student Handbook describes the Institute's complaint procedures. It states that students and parents are encouraged to resolve concerns with the Director and further that gender harassment is to be reported to the principal or if the principal is involved to the Assistant Superintendent. These directions appear to be taken from an educational entity that contains multiple schools and are not applicable to the Institute, which has a single school headed by the Director and not a Principal and which does not have an Assistant Superintendent. Further, the complaint procedures state that "upon receipt of notification of harassment and/or discrimination the Director must contact the Office of Equal Opportunity Services (OEOS) within 72 hours." The Institute does not have an OEOS, and this directive appears to be taken from a different educational entity. The Student Handbook's Title IX Section also contains a "How to File" and Appeals section both of which direct persons to contact the OEOS or refer to the Assistant Superintendent.

The 2016-19 Student Handbook's Title IX section does not describe the investigatory process, including the time frames, the nature of the investigation, potential interim measures, rights of the complainant and respondent, or potential remedies or sanctions.

The 2019-20 Student Handbook contains similar language as the 2016-19 Student Handbook regarding the Institute's Title IX investigatory procedures. The 2019-20 Student Handbook does not refer students to the Assistant Superintendent, but references to the OEOS remain in this edition of the handbook.

In addition, the 2019-20 Student Handbook does not explicitly name a Title IX Coordinator. In addition, the 2019-20 Student Handbook advises students that they may report sexual harassment to outside agencies, including state civil rights agencies, the U.S. Equal Employment Opportunity Commission, OCR, and the University of New Mexico Police Department. The 2019-20 Student Handbook does not make clear that the Institute will respond to reports of sexual harassment where a student may also report the conduct to outside agencies.

Title IX Grievance Procedures Legal Standards, Analysis, and Findings

At the time the Complaint was filed, 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. The regulation, at 34 C.F.R. § 106.8(b), required 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 assault.

The Title IX regulation does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its policies and procedures must provide effective means for preventing and responding to sexual harassment. Thus, if students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.

OCR previously identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for:

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint; and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.⁴

The Institute's grievance procedures do not include many of these elements. Specifically, the grievance procedures do not:

- Adequately describe prohibited conduct
- Adequately describe the investigatory process, including the ability of the complainant and respondent to present evidence and participate in the process;
- Adequately describe the time frame of the investigation;
- Adequately describe interim remedies that can be provided to the complainant and respondent;
- Provide for the complainant and respondent to be notified of the outcome of any investigation; and
- Adequately describe sanctions for violations of the Institute's policies.

In addition, the Institute's grievance procedure contains inaccurate information – referring the parties to the Assistant Superintendent and OEOS, which do not exist. The grievance procedures and complaint forms are not publicly available online, and the Institute did not provide a copy of the complaint form described in the procedures.

⁴ <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html#IX>.

Based on the deficiencies in the grievance procedures, OCR finds that the Institute is not in compliance with 34 C.F.R. 106.8(b).

Conclusion

The Institute was willing to address the violations found and entered into the Agreement. When the Agreement is fully implemented, the issues will be resolved consistent with the requirements of Title IX and its current implementing regulation. OCR will monitor implementation of this Agreement through periodic reports from the Institute about the status of the Agreement terms. We will provide the Institute written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. We will provide the Complainant with a copy of our monitoring letters. If the Institute fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this complaint and should not be interpreted to address the Institute's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

Please be advised that the Institute 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, or other individual, may file another complaint alleging such treatment. In addition, the Complainant 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.

The Complainant has a right to appeal OCR's determination regarding **allegation 2 only** within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the Institute has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the Institute, stating that this case is closed. The Complainant will receive a copy of our monitoring letters.

If you have any questions, please contact Patrick Alexander, the attorney assigned to this complaint, at Patrick.Alexander@ed.gov.

Sincerely,

Sandra J. Roesti
Supervisory Attorney

Enclosures: Agreement

cc: XXXXXXXXXXX, Counsel, by email only to XXXXXXXXXXXXXXXXXXXX