



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 18, 2018

Ms. Crystal Danzy, Principal
South Mountain School
EAGLE College Preparatory Schools
2450 West South Mountain Avenue
Phoenix, Arizona 85041

via email only to XXXX@XXXX

Re: **EAGLE College Preparatory Schools – South Mountain**
OCR Case Number 08-18-1551

Dear Principal Danzy:

We write to inform you of the resolution of the above-referenced complaint, filed on August 20, 2018, against EAGLE College Preparatory Schools – South Mountain (“School”), alleging discrimination on the basis of sex. Specifically, the Complainant alleged that the School failed to respond appropriately to sexual harassment of her son by a peer (XXXX).

Jurisdiction

The Office for Civil Rights (OCR) of the U.S. Department of Education (“Department”) is responsible for enforcing Title IX of the Education Amendments of 1972, and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 106, which prohibit discrimination based on sex in education programs and activities that receive Federal financial assistance. As a recipient of Federal financial assistance from the Department, the School is subject to this law and regulation.

Procedural History

OCR opened an investigation of the allegation and sent the School a data request on XXXX, 2018. After the School provided a partial data response, but before OCR conducted additional investigation and issued a final determination, the School expressed an interest in taking voluntary action to resolve the Complainant’s allegation. We determined that it was appropriate, pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM), to resolve the allegation with an agreement without completing a full investigation of the allegation.

Facts According to the Complainant

Prior to ceasing the investigation, we received the following account from the Complainant.

On XXXX, 2018, the Student was “sexually assaulted” by another student (“Student A”) when Student A, unprovoked, XXXX. The Complainant wrote to OCR, “There has been a history of bullying behavior from [Student A] before[.]”

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 Complainant took the Student to urgent care because XXXX. Medical records provided by the Complainant to OCR indicated that the Student had XXXX and XXXX. The Complainant also filed a report with the Phoenix Police Department.

That evening, the Student's parents had a phone call with the Principal about the incident. The Principal's response was "cold," "defensive," "combative," "rude." The Principal did not offer to remove Student A from the Student's class or to create a safety plan.

The Complainant withdrew the Student from the School because the Student was not safe.

Facts According to the School

Prior to ceasing the investigation, we received the following account from the School.

On XXXX, 2018, the Student and Student A, both of whom were in first grade and six-years-old, were sitting next to each other while XXXX. Student A bent over and bit the Student XXXX. Both students were brought to the office by School staff. Student A was very upset, but the Student was smiling and playing, and showed no signs of injury.

A School administrator interviewed both students. Student A stated that he and the Student were consensually playing a "vampire game." Also, Student A said that when he leaned forward to bite the Student, the Student pushed his head downward and Student A bit the Student XXXX. Finally, Student A reported that he did not intend to hurt the Student and did not seem to understand that a bite would cause injury.

The School wrote to OCR:

After speaking with the parent, both students, and the staff members who witnessed the incident, the School had no evidence to suggest the incident was of a sexual nature or was sexual harassment. As such, the School did not consider the incident sexual harassment or discrimination based on sex when handing out discipline to Student A. ...

... The incident involved children of a very young age, XXXX, who admitted to consensually playing the "vampire game" and there was no evidence whatsoever that the conduct in question by Student A was of a sexual nature; it was inappropriate and aggressive, yes; but was not physical conduct of a sexual nature or done with a sexual motive[.]

The School administrator contacted the Complainant and asked that she come to the School to check the Student's injured area. The Complainant did as the School asked and then took the Student to the doctor.

During afternoon dismissal, the Student's parents returned to the School campus, accompanied by law enforcement. The Student's parents spoke with the police. The parents of Student A were asked to come to the School to speak with the police, which they did. School personnel were not present during the conversations.

That evening, the School's Principal and Dean of Students had a telephone conference with the Student's parents to discuss the parents' concerns. The Principal offered to move the Student to a different classroom. The School wrote to OCR, "During the telephone call, the Parents – for the first time – indicated that they believe Student A had 'bullied' the Student since the previous school ... and they perceived the current incident as a continuation of that bullying."

The Student's parents withdrew him from the School on XXXX, 2018.

Notably, during the course of the investigation, we requested from the School: a copy of the School's Title IX policies and procedures; the name and title(s)/position(s) of the School's Title IX Coordinator; and a description of how the School's Title IX policies, procedures, and notice of Coordinator are disseminated to students, parents, and guardians. The School responded, "The School does not have the ... information or documents you requested."

Conclusion

After reviewing initial information provided to OCR by the Complainant and School, we determined that it was appropriate to enter into an agreement that appropriately addresses the issue raised by the complaint without continuing a full investigation of the allegation. Therefore, we then drafted a Resolution Agreement ("Agreement") and sent it to the School. On October 17, 2018, we received a signed Agreement from the School. Enclosed is a copy of the signed Agreement.

When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Title IX and its implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the School demonstrating that 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. The Complainant will be copied on our monitoring letters. If the School fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

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

Please note that the Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation. 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 individual may file another complaint alleging such treatment.

This letter sets forth OCR's determination in an individual 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.

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, and for the assistance of the School's staff and attorney. If you have any questions or concerns, you may contact Jason Langberg, the attorney assigned to this case, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Resolution Agreement

cc (via email): Kimberly Davis, Attorney for the School, Udall Shumway
Diane Douglas, Superintendent of Public Instruction