



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VIII

ARIZONA
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XXX

Superintendent Michael Moore
Huerfano RE-1 School District
201 East 5th Street
Walsenburg, CO 81089

Sent by email only to: mmoore@huerfano.k12.co.us

Re: OCR Complaint No. 08-22-1354
Huerfano RE-1 School District

Dear Superintendent Moore:

On XXX, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against the Huerfano RE-1 School District (District). The Complainant alleges that the District discriminated against a Student (Student A) on the basis of sex. Specifically, the Complainant alleges that the District failed to appropriately respond to a complaint of peer-on-peer sexual harassment involving Student A and failed to appropriately respond to a subsequent complaint alleging that District staff retaliated against Student A following the initial complaint.

Because OCR has jurisdiction and the complaint was filed timely, on XXX, OCR initiated an investigation pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving federal financial assistance from the Department. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to this law.

I. Legal Standards

Title IX and its implementing regulations, at 34 C.F.R. § 106.44, require a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient to respond promptly in a manner that is not deliberately indifferent. The regulations state, in relevant part, that actual knowledge means notice of sexual harassment or allegations of sexual harassment to any employee of an elementary or secondary school. The regulations state that a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light

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of the known circumstances. 34 C.F.R. § 106.44 further states that a recipient's response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30, and by following a grievance process that complies with §106.45. The regulations require the Title IX Coordinator to promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a complaint, and explain to the complainant the process for filing a formal complaint.

34 C.F.R. § 106.45 describes the grievance process that a recipient must follow in complaints of sexual harassment.

34 C.F.R. § 106.71 states that no recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Furthermore, complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under 34 C.F.R. § 106.8(c).

II. Summary of Evidence Obtained to Date

In the initial stage of investigating this case, OCR interviewed the Complainant and reviewed information provided by the Complainant. On XXX, OCR formally notified the District that OCR was opening an investigation into the allegations and requested information and records. In reviewing information from the Complainant and the District, OCR learned the following.

Student A was a XXX student during the XXX school year. On XXX, one of Student A's classmates (Student B), notified the District that a fellow student (Student C) had made inappropriate statements of a sexual nature as well as other inappropriate statements. Immediately, upon learning of the allegations, the District began an investigation by gathering information from students and staff through interviews and by other means. During the investigation, the District learned that Student A was also an alleged target of the statements and that another student (Student D) had also allegedly made similar statements. In response to the allegation, the District allowed the students to change classes, instituted no contact orders between the students involved, and conducted threat assessments with Student C and with Student D. Additionally, local law enforcement also conducted an investigation that was separate from the District's investigation.

On XXX, the Complainant made a complaint to the District alleging that staff were retaliating against Student A for having made the complaint. On XXX, the District responded by notifying the Complainant that the District had incorporated these new allegations into the initial investigation.

On XXX, the Principal provided an investigation report to the District’s Superintendent containing the issues investigated, a summary of the investigation, and investigative findings. Based upon the investigation report, on XXX, the Superintendent sent the Complainant a determination letter describing the investigation and concluding that the evidence did not support the allegations; however, the letter did not clearly identify the result of the investigation concerning the allegation of retaliation by District staff. Additionally, OCR reviewed the District’s published Title IX policies and procedures and noted that several regulatory requirements were not clearly set forth in the published policies. OCR determined that the deficiencies in the policies and procedures did not impact the outcome of the investigation of the allegations of inappropriate statements of a sexual nature.

Student A currently attends XXX and there have been no further incidents involving Student C or Student D. Additionally, Student D, who was the focus of Student A’s concerns, no longer attends school in the District.

Pursuant to Section 302 of the CPM, allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations, and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation and will be consistent with applicable regulations. On XXX, prior to OCR having sufficient evidence to make a finding, the District expressed an interest in resolving the allegations pursuant to CPM Section 302.

On XXX, the District, through its attorney, acknowledged deficiencies in its published Title IX policies and procedures. Additionally, although the documents that the District compiled contain contemporaneous records related to the Complainant’s allegation of retaliation, neither the investigative report nor the determination letter adequately address these allegations.

Based on the allegations and the evidence provided, OCR determined that these allegations may be appropriately resolved through an agreement under Section 302 of the CPM. On XXX, OCR received the District’s signed resolution agreement (Agreement), a copy of which is enclosed with this correspondence. Accordingly, this complaint investigation is closed as of the date of this letter, and OCR will monitor the agreement to ensure compliance.

III. Conclusion

This letter closes the investigative phase of this case. The case is now in the monitoring phase. OCR will closely monitor the District’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District’s policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Title IX. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

This letter sets forth OCR’s determination in an individual case and should not be relied upon, cited, or construed as a formal statement of OCR policy. 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.

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, it will seek to protect, to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy. Individuals filing a complaint or participating in our resolution process are protected from retaliation by federal law.

If you have any questions, please contact XXX, the OCR attorney assigned to this complaint, at XXX or XXX.

Sincerely,

Thomas M. Rock
Supervisory Attorney
p.p. XXX

Enclosures – Resolution Agreement

CC: XXX
XXX
By email only to XXX

Katy Anthes
Colorado Commissioner of Education
By email only to commissioner@cde.state.co.us