



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

April 17, 2015

Kathleen McNamara, Ed.D.
Superintendent
Palo Robles Joint Unified School District
800 Niblick Road
Paso Robles, California 93446-4858

(In reply, please refer to case no. 09-14-1376.)

Dear Superintendent McNamara:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Palo Robles Joint Unified School District. The complaint alleged that the District discriminated against a Student¹ on the basis of sex. OCR accepted the following issues for investigation.

1. Whether the Student was subjected to sexual harassment by an honors class teacher (Teacher) during the 2013-14 school year.
2. Whether the District failed to respond appropriately and effectively to notice of the alleged sexual harassment.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits discrimination on the basis of sex in programs and activities operated by recipients of Federal financial assistance. The District receives Department funds and is subject to the requirements of Title IX and the regulation.

OCR gathered evidence through interviews with the Complainant, the Student, other students, the Teacher, and other District personnel. OCR also reviewed documents provided by the District and the Complainant. OCR determined that the District did not provide an adequate procedural response to the Complainant's internal complaint. However, based on its own investigation, OCR found that the Teacher did not sexually harass the Student during the 2013-14 school year. Finally, OCR determined that the District's sex discrimination complaint procedures, as written, include several elements that do not meet the requirements of the Title IX regulations. The District agreed to resolve the areas of non-compliance through a Resolution Agreement.

The applicable legal standards, the facts gathered during the investigation, and the reasons for our determination are summarized below.

¹ OCR notified the District of the identity of the Student and her mother, the Complainant, when the investigation began. We are withholding their names from this letter to protect their privacy.

Legal Standards

The Title IX regulations, at 34 C.F.R. §106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. School districts are responsible under Title IX and the regulations 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 the student's ability to participate in or receive education benefits, services, or opportunities.

Districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice. In determining whether a hostile environment based on sex has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the district's program. OCR examines all the circumstances, including: the type of harassment (e.g. whether it was verbal or physical); the frequency and severity of the conduct; the age, sex and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the district; and other relevant factors.

Under Title IX and the regulations, if a student is sexually harassed by an employee, the district is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including sexual harassment. These requirements include adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. §106.8(b)).

Factual Summary and Compliance Determination

The District has two sets of policies, BP and AR 4219.11 and BP and AR 5145.7, clearly prohibiting sex discrimination, including sexual harassment, and related retaliation by employees and students.

The District also has two complaint procedures that cover allegations of sex discrimination, including sexual harassment. The first, described in BP and AR 5145.7 (sexual harassment complaint procedures, or SHCP), specifically cover complaints of sexual harassment and related retaliation filed by students. The SHCP defines sexual harassment and provides for a school-level complaint process with an

investigation conducted by the principal. It does not require that principals receive any specific training regarding investigating student complaints of sexual harassment.² Students may report an allegation of sexual harassment to any school employee, who is then responsible to notify the principal. An employee who observes sexual harassment must also report it to the principal, whether or not the victim files a complaint. No filing timeframe is noted in the SHCP. The SHCP provides for interim measures and references confidentiality considerations. Optional mediation is offered in cases of student to student sexual harassment. There is no reference as to whether mediation would be allowed in complaints involving allegations of sexual violence.

The principal must promptly initiate an impartial investigation under the SHCP, including interviews, review of documents, and visiting the location of the alleged harassment, as necessary. The SHCP includes a detailed list of factors to be considered in reaching a determination about the complaint, and considerations to judge the severity of the harassment. No more than 30 days after receiving the complaint, the principal must conclude the investigation and prepare a written report of findings. The report includes the decision, the reasons for the decision, and a summary of steps taken during the investigation. If it is determined that harassment occurred, the report must also include any corrective actions to address the harassment and prevent any retaliation or further harassment. The report is presented to the student, the accused, the parents of both, and the Superintendent or designee. The SHCP also requires the principal to ensure that the harassed student and his/her parent/guardian are informed of the procedures for reporting any subsequent problems, and to make follow-up inquiries regarding any new incidents or retaliation. There is no reference to an appeal opportunity in the SHCP.

The second set of complaint procedures is BP and AR 1312.3, the Uniform Complaint Procedures (UCP). The UCP covers complaints of unlawful discrimination in District programs and activities on various protected bases, including sex, and also prohibits retaliation. Sexual harassment is not specifically defined in the UCP. UCP complaints may be filed by a person who alleges that he/she personally suffered unlawful discrimination or by a person who believes that an individual or any class of individuals has been subjected to unlawful discrimination. There is a filing timeframe of six months from the date of the alleged discrimination or from the date that the complainant first knew of the alleged discrimination.

The UCP, for the most part, is a District-level procedure.³ The Director of Human Resources (HR Director) is the compliance officer designated to receive and investigate complaints, and the UCP requires that employees designated to investigate complaints be knowledgeable about the laws and programs for which they are responsible.

The UCP provides that all complaints will be investigated and resolved within 60 days of receipt, and that confidentiality will be maintained to the extent that the investigation is not obstructed. The UCP does not mention interim measures. The compliance officer must provide the complainant/representative an opportunity to present the complaint and any evidence to support the

² BP and AR 4219.11 for the most part describe the District's policy prohibiting sexual harassment in the workplace. This policy/regulation requires periodic sexual harassment in the workplace training for all supervisory employees, and periodic training for all employees concerning the procedures for filing sexual harassment complaints.

³ The UCP does provide for optional informal resolution of complaints at the site level, as well as through the Superintendent or designee. There is no reference as to whether mediation would be allowed in complaints involving allegations of sexual violence.

allegations. The officer must also collect all documents and interview all witnesses with pertinent information. The UCP states that a complainant's refusal to provide documents or other evidence, failure/refusal to cooperate, or engagement in obstruction of the investigation may result in dismissal of the complaint. It also states that the District shall provide the compliance officer with information related to the complaint, but contains no language indicating that a decision may be reached in the complainant's favor if the accused individual refuses to provide evidence, fails to cooperate, or engages in obstruction.

Within 30 days of receiving a UCP complaint, the compliance officer must provide the complainant a written report of the investigation and decision. The decision must include: the findings of fact; the conclusions of law; the disposition of the complaint; the rationale for such disposition; corrective actions, if any are warranted; and notice of the complainant's right to appeal. If the complainant is dissatisfied, he/she may file an appeal with the District School Board (Board). If dissatisfied with the Board's final decision, the complainant may appeal to the California Department of Education.

Students, employees, and parents/guardians are regularly notified of the SHCP and the UCP through print and electronic notices and publications.

Finally, the District has a general complaint procedure to process other types of allegations concerning the actions of District employees---BP and AR 1312.1, Complaints Concerning District Employees (CCDE). The CCDE prohibits retaliation and provides that a complainant's identity may be kept confidential, except to the extent necessary to investigate. The procedure provides that whenever possible the complainant should communicate directly with the accused employee in order to resolve concerns. If the complainant is unable or unwilling to do so, he/she may submit an oral or written complaint to the employee's immediate supervisor or the principal. Staff members who are responsible for investigating complaints are required to attempt to resolve the complaint within 30 days. Both parties may appeal a decision by the principal/supervisor to the Superintendent/designee, who shall again attempt to resolve the complaint within 30 days. The Superintendent/designee's decision is final, but either party may address the Board regarding the complaint. The CCDE does not describe an investigation, findings, or written notice of the outcome, including corrective actions.

The District did not provide OCR a clear explanation regarding how the SHCP and the UCP are coordinated with respect to processing complaints of sexual harassment filed by students against employees. The District indicated, however, that the CCDE should not be used to respond to a complaint of sexual harassment filed against an employee.

The District also has a student dress code policy, set out in BP and AR 5132. Information about the policy is provided in the Student Handbook and the Employee Handbook. The policy provides that student dress must "not cause a distraction that would interfere with the educational process." It specifically requires, with respect to dresses, shirts, and blouses, that "the neckline must maintain privacy", and states that "low-cut tops" are prohibited. The District reported that male staff members are advised to contact security personnel to address violations by female students so that female security officers may assess the clothing.

During the 2013-14 school year, the Student was a sophomore at a District high school (School). She was enrolled in a class taught by the Teacher. The Teacher was the only teacher teaching the specific class.

Between October X, 2013 and January XX, 2014, the Teacher issued four discipline referrals to the Student for loud talking and/or disruptive behavior. Three of the referrals also included dress code concerns. For two of them, the Teacher specified that the Student wore a low cut top under her sweater and removed the sweater in class.

During the same period, the Principal, Assistant Principal and/or the HR Director met in person or spoke by telephone with the Complainant and/or Student four times. One meeting also included the Teacher. During these conversations the Complainant raised concerns about the discipline referrals related to the dress code and a variety of other complaints about the Teacher including that the Teacher alienated the Student with a seating change, excluded her from class activities, generally demeaned her, and kept her after class. According to the Teacher, the Student had dress code violations because the Teacher thought her shirt straps and necklines were a distraction to male students. The Complainant and the Student told OCR that in an October XX, 2013 meeting the Teacher accused the Student of standing up and taking her sweater off in class in a way that was distracting to male students, which the Student denied doing. The Complainant and the Student did not agree that the Student had dressed inappropriately. In another conversation, the Complainant commented that the Teacher's eyes should remain on the Student's face, not on her chest, and said that he called the Student "sweetie" and "honey." On at least five occasions School administrators asked the Complainant and/or the Student to put their concerns in writing so that they could be investigated but the Complainant and Student did not do so.

From January XX to March X, 2014, neither the School nor the District received any further verbal or written allegations against the Teacher from the Complainant or the Student, and therefore assumed that the situation had been resolved. However, on or around March X, the Complainant called the AP and reported that: the Student was forced to sit next to the Teacher's desk while he leered at her; the Teacher spoke inappropriately to the Student during a lesson, and the Student was being teased by her peers. The AP once again asked for written allegations, but also interviewed the Student. According to the AP, the Student told him on March X that she was concerned about the way the Teacher addressed her regarding her popping gum and bringing water into class, feeling uncomfortable taking a test because her desk was so close to the Teacher, and the Teacher's comments on sexual themes in a novel. The AP again requested a written statement, and provided the Student with a form to complete at home. The AP told OCR that the Student never told him that the Teacher was staring at her in an inappropriate way. Rather, she stated that her desk location was uncomfortable because it was causing her to have test anxiety.⁴

On March X, 2014 the Teacher again referred the Student to the office for a dress code violation. For this referral, a female security staff member assessed the Student and concluded that her attire was "borderline." On March X and X the Complainant emailed the AP, again raising a number of concerns about the Teacher, including: yelling at the Student and belittling her; "constant harassment" of the Student; inappropriate comments about the Student's attire such as "low plunging neckline"; a schedule change; continued referrals for dress code violations and for alleged past offenses; and marking the Student tardy if she was not in her seat when the bell rang. On March XX, 2014 the AP replied to the Complainant, stating that he was interpreting her emails as a request for a formal investigation under

⁴ The teacher stated that he placed the Student's desk next to his as a classroom management technique to discourage excessive talking in class.

AR 1312.1 (the general procedure for complainants against employees). He outlined his understanding of the allegations---that the Teacher: issued a disciplinary referral for numerous offenses that were unfounded and occurred almost a month prior; yelled for his teaching assistant to escort the Student to the office; marked the Student tardy when she was not in her seat when the bell rang; graded the Student unfairly; and treated the Student disrespectfully. The email requested the Complainant to inform the AP if there were additional allegations or if the stated allegations were inaccurate.

Both the AP and the HR Director told OCR that the HR Director advised the AP to interpret the emails as a complaint under AR 1312.1. The HR Director did not believe that a sexual harassment claim was ever filed or communicated by the Student or the Complainant. His understood the Complainant to be concerned about the Teacher allegedly picking on and mistreating the Student in the context of issues such as dress code violations, restroom use, seating, etc. He interpreted the complaint to fall under AR 1312.1 because he felt the concerns reflected a general dissatisfaction with an employee's interaction with her daughter.

The AP informed the Teacher on March XX, 2014 that the Complainant had filed a formal complaint against him. The next day, the Teacher issued the Student another disciplinary referral. The reason given on the referral slip was that the Complainant had threatened to sue the District and the Teacher. Upon receipt of this disciplinary referral the AP reversed it, immediately returned the Student to class, and informed the Teacher that the referral was invalid.

On March XX, 2014, the Complainant sent an email to various administrators in the District, including the AP and the HR Director, requesting that additional information be added to her previous written complaint. She raised concerns again about the disciplinary referrals for dress code violations, stating that the Teacher's notes included statements such as "deep plunging necklines" and "low-cut shirt under sweater." The Complainant stated that the Student felt uncomfortable when the Teacher discussed her neckline and chest area and felt that he should not be looking at her there. The Complainant also raised concerns about the location of the Student's desk, the Teacher yelling at the Student, and the disciplinary referral made in response to her complaint.

The District assigned the investigation of the Complainant's complaint to outside legal counsel. The investigation began at the end of March 2014 and an investigation report was issued on April X. The investigator interviewed the Complainant, the Student, the AP, the Teacher, and the HR Director. He also reviewed written statements from two student teaching assistants, as well as student discipline records and correspondence.

According to the investigator's interview notes, the Complainant and the Student told him about the numerous issues that they had with the Teacher, as described above, and suggested that the Teacher may have picked on the Student based on her gender. They also said that for three months the Teacher called the Student "darling", and stated that during the meeting of October XX, 2013 he accused the Student of "performing a striptease" when she was taking her sweater off during class. There was no reference to the Teacher commenting on sexual themes in a novel.

Statements from the student teaching assistants were provided to the investigator. They discussed the Teacher's approach to disciplining the Student for behavior such as dress code violations, talking, and popping gum. There is no indication that the students were asked about inappropriate staring at the

Student's chest area, calling the student names such as "honey", writing inappropriate details about her manner of dress on referral slips, or discussion of sexual themes in reference to a novel.

There was also no reference in the notes from the Teacher's interview to questions about any sexually inappropriate conduct or the specific actions alleged by the Complainant and Student. The Teacher confirmed to OCR that the investigator did not ask him any questions concerning alleged sexual harassment.

In his April X, 2014 report, the investigator reached findings and made recommendations regarding the following allegations: unduly harsh discipline for unsupported dress code violations; isolating the Student's seat location, then placing her seat very close to his own worktable; publicly reprimanding the Student for popping gum; requiring the Student to make up class time lost while she was in the restroom; picking on the Student and yelling at her in class; and retaliating against the Student by issuing a discipline referral in response to her mother's complaint.

The report concluded that although the Teacher would have preferred to remove the Student from his class, he did not treat her inappropriately with regard to particular incidents of discipline. It noted that the retaliation allegation had already been addressed by School administration. The investigator did recommend that the Teacher be counseled in several areas, including the dress code referral procedure, documentation of discipline referrals, and his classroom management policies with respect to gum chewing, restroom use, and seat placement. He also recommended that the Student and the Complainant be advised of student behavior standards related to classroom disruption, dress code, restroom use, gum chewing, and seating assignments. The report did not address sexual harassment. After the OCR complaint was filed, the investigator submitted a statement in response to OCR's data request. He stated that he felt that the attention the Teacher paid to the Student's neckline was directly related to his enforcement of the dress code and therefore would not have constituted sexual harassment.

After receiving the report, the HR Director and AP counseled the Teacher in the recommended areas.

On May XX, 2014, the Complainant sent an email to a Board member, reiterating her numerous allegations against the Teacher, stating that the harassment against the Student was continuing, including sexual harassment, and repeating her concerns about references to and staring at the Student's neckline. On May XX, 2014, the Superintendent met with the Complainant. The Superintendent agreed to review the files with the HR Director to ensure that all appropriate protocols were followed and to place an adult employee in the Student's class through the end of the school year to assure that any further incidents were accurately documented for the protection of all involved. The AP sat in on the Student's class through the end of the school year and no further incidents were reported by either the Student or the Teacher. The Complainant also requested that all reference to previous disciplinary referrals of the Student by the Teacher be removed from the educational record. In June 2014 the AP confirmed in writing that this had occurred.

The Complainant also filed her OCR complaint on May XX, 2014. The Complainant alleged to OCR that the Teacher sexually harassed the Student because he: stared at her chest area; wrote comments on disciplinary documents such as "low plunging neckline" or "excessive cleavage"; and yelled at boys on numerous occasions to not sit next to the Student because they would just stare at her. As a part of its

investigation, OCR interviewed the Complainant, the Student, the Teacher, the AP, the HR Director, a female security guard, and six other students.

With respect to the allegation concerning staring, the Student told OCR that during class the Teacher would come to where she was sitting, make eye contact, stare at her chest area for 3-4 seconds, and then look away. She stated that this happened multiple times a week throughout the entire school year. The Teacher told OCR that he never stared at the Student's chest area. He noted that he would occasionally briefly look at her neckline if there was a potential dress code concern so that he could document the reason on the referral slip, because her violations always involved her neckline. None of the students interviewed by OCR ever witnessed the Teacher staring at the Student's chest area.

The female security guard told OCR that she had regular contact with the Student during the course of the school year and that the Student never told her that the Teacher stared at her inappropriately. The AP, who had numerous interactions with the Complainant and the Student, also indicated that neither of them ever told him that the Teacher was staring at the Student's chest. He noted that the Complainant did state as an aside when complaining about the dress code referrals that the Teacher's "eyes should remain on her face, not on her chest", but she did not characterize this as sexual harassment. The HR Director likewise told OCR that, while Complainant made statements such as "he shouldn't be looking at her there" in the context of discussing the dress code violations, neither the Complainant nor the Student ever alleged to him that the Teacher stared at the Student inappropriately.

Regarding the allegation about the Teacher's reference to the Student's neckline in dress code referral forms, the Student told OCR that the Teacher would write statements such as "plunging neckline" or "excessive cleavage." She said that he would then repeat those statements to her in a hushed tone when he handed her the slips, which made her uncomfortable. The Teacher told OCR that he would tell the Student to take the slip to the office, but did not speak the reason for the dress code referral to the Student. He stated that he never made the following statements verbally to her: low or deep "plunging neckline", "excessive cleavage", or "low-cut top under sweater." None of the students OCR interviewed witnessed the Teacher repeating the reasons for the Student's dress code violations to her when handing her the referral slips. The AP and the HR Director both told OCR that neither the Complainant nor the Student ever alleged to them that the Teacher repeated the reasons for the Student's dress code violations to her. The female security guard also confirmed that the Student never alleged this to her during their discussions of dress code concerns.

Regarding the Complainant's allegation that the Teacher yelled at male students numerous times not to sit next to the Student, the Student indicated to OCR that this only occurred one time, after the District's investigation was complete. The Student stated that in late May 2014 she was sitting next to a male friend of hers during a computer lab when the Teacher yelled at the male student "why don't you find another seat? You've been staring at her all day." The male student confirmed to OCR that the Teacher yelled at him to move to another seat, and said that he had been staring at the Student instead of looking at his computer screen.

Finally, OCR asked the Teacher and the other students interviewed about the allegations previously raised to the AP by the Complainant or the Student that the Teacher referred to the Student as "honey" or "sweetie", and that the Teacher inappropriately commented on sexual themes from a novel. The Teacher denied referring to the Student by these terms, and none of the students interviewed recalled

the Teacher referring to the Student in this manner. Three students indicated that the Teacher is southern and sometimes referred to female students in general, not just the Student, as “darlin.” Concerning the second allegation, the Teacher told OCR that he did read passages from a novel that referred to sexual themes, and noted that the novel was a Board approved part of the curriculum. He stated that he did not inappropriately comment on the passages. The six students interviewed by OCR recalled that some of the passages read in class were somewhat sexual in nature, but stated that any comments by the Teacher related to the lesson. No student reported that the Teacher made inappropriate comments during the discussion.

Issue 1): Whether the Student was subjected to sexual harassment by the Teacher during the 2013-14 school year.

Based on OCR’s review of the factual information gathered during its investigation, OCR determined that the preponderance of the evidence did not support a finding that the Student was subjected to sexual harassment by the Teacher during the 2013-14 school year.

Regarding the allegations that the Teacher frequently stared at the Student’s chest area and repeated detailed descriptions of her neckline as he handed her dress code referral slips, the Teacher denied engaging in such behavior and none of the students interviewed by OCR indicated that they had witnessed the behavior, which was alleged to have taken place during class time when other students were nearby. In addition, there was no evidence that the Student or the Complainant notified School or District personnel of these specific allegations at any time, even though they were in regular communication regarding numerous other concerns about the Teacher.

Concerning the allegation that the Teacher wrote detailed descriptions of the Student’s neckline in disciplinary referrals and notes, OCR found that the Teacher only described the Student’s neckline twice in disciplinary referrals and notes---once in October 2013 and once in January 2014. In both instances he noted that she was wearing a “low-cut top” under her sweater and had removed her sweater during class. OCR concluded that the descriptions were related to the context of the referral, enforcement of a dress code policy that specifically prohibits low-cut tops, and did not constitute sexually harassing conduct.

The facts indicate that the Teacher directed a male student not to sit by the Student only one time. The male student confirmed that the Teacher told him to move because he thought the male student had been staring at the Student instead of focusing on his computer screen. There may be circumstances under which a teacher’s admonitions to male students to avoid a female student due to her manner of dress could contribute to a sexually hostile environment. However, this one incident was not sufficient to raise a compliance concern.

Finally, the evidence did not support a finding that the Teacher repeatedly referred to the Student as “sweetie” or “honey,” or made inappropriate comments about sexual themes from material discussed in class. Again, the Teacher denied referring to the Student in this manner or inappropriately commenting on the class material, and no student interviewed by OCR witnessed such references or comments being made.

Accordingly, OCR found the District in compliance with Title IX requirements with respect to this issue.

Issue 2): Whether the District failed to respond appropriately and effectively to notice of the alleged sexual harassment.

OCR found that the District has adopted two sets of complaint procedures that cover allegations of sex discrimination, including sexual harassment, filed by students against employees---the SHCP and the UCP. For the most part, both procedures contain a number of basic elements of a prompt and equitable grievance procedure under 34 C.F.R. §106.8(b). However, both procedures raise compliance concerns, as written. For example, the SHCP does not require that assigned investigators be knowledgeable about applicable legal standards, and does not specify that even voluntary mediation is not appropriate in cases involving sexual violence. The UCP does not: define sexual harassment; specify that even voluntary mediation is not appropriate in cases involving sexual violence; or refer to the availability of interim measures for the complainant during the investigation. In addition, the UCP provides that a complainant's failure to cooperate or engaging in obstruction during the investigation may result in a dismissal, but contains no parallel consequence if a respondent fails to cooperate or engages in obstruction.

Further, the SHCP and the UCP are different in several respects. For example, one is a site level procedure and one is a District level procedure; one applies to only student complaints and the other covers a broad range of complainants; one has a filing timeframe and the other does not; one includes a detailed list of factors to consider in determining whether sexual harassment occurred and the other does not; one provides for follow-up inquiries to address potential retaliation and the other does not; the procedures have different investigation time frames; and one provides for two levels of appeal while the other has no appeal opportunity. There is no coordination between the two complaint procedures with respect to processing complaints of sexual harassment, and the District provides no clear notice to potential complainants about what procedure is applicable under what circumstances.

Taking all of this into account, OCR concluded that the District does not currently have a sexual harassment complaint procedure in place that meets the equitable requirement of 34 C.F.R. §106.8(b).

With respect to the District's procedural response to notice of any alleged sexual harassment of the Student by the Teacher, OCR found that site and District level administrators communicated with the Complainant and the Student frequently throughout the 2013-14 school year regarding the numerous concerns they raised about the Teacher's treatment of the Student. The evidence indicates that while the Complainant and Student contested the Teacher's referral of the Student for dress code violations beginning in October 2013, they did not report facts that should have led the District to interpret their concerns as a possible allegation of sexual harassment until January 2014.

However, in January 2014, the Complainant reported to the AP that the Teacher referred to the Student as "sweetie" or "honey" and, in reference to dress code referrals, stated that the Teacher's eyes should remain on the Student's face, not on her chest. In early March 2014, the Complainant also told the AP that the Student was forced to sit next to the Teacher while he "leered" at her, and the Student reported that the Teacher made her uncomfortable by commenting on sexual themes while discussing a novel in class. In her March X email to the AP, the Complainant also expressed concern about what she alleged to be inappropriate comments by the Teacher about the Student's neckline.

The AP, in consultation with the HR Director, decided to interpret the Complainant's emails of March X and X, 2014 as a written complaint against the Teacher. However, the allegations concerning leering, comments about the neckline, discussion of sexual themes, and referring to the Student as "sweetie" or "honey" were not included in the AP's March XX listing of allegations to be investigated. Even after the Complainant sent another email on March XX specifically requesting that additional information be added to her written complaint, the District again did not include her expressed concern that the Teacher made the Student uncomfortable by looking at her chest area and commenting on her neckline. Taken together, these reported concerns from January through March should have been sufficient for the District to include an allegation of sexual harassment in its investigation or, at a minimum, discuss the District's sexual harassment policy and specifically inquire whether the Complainant or the Student was intending to file that type of complaint.

Because the District did not interpret any of the Complainant's or the Student's concerns to raise allegations of sexual harassment, it proceeded under AR 1312.1 and not the UCP or the SHCP. OCR notes, however, that the District arranged for an outside investigator to conduct a full investigation of numerous allegations in the complaint, which included interviews, review of documents, detailed written findings, and notice to the Complainant of the outcome in a timely manner. However, even though the Complainant and the Student during their interview again referred to the Teacher writing inappropriate details about the Student's neckline, calling the Student "darling," and accusing her of "performing a striptease" in class, no allegation of sexual harassment was investigated and no finding was made as to these issues.

Accordingly, OCR determined that the District failed to respond appropriately and effectively to the above-noted concerns, which, taken together, reasonably should have been interpreted as raising an allegation of sexual harassment. OCR notes that while the District's response raised questions about its interpretation of the amount and type of information that should trigger its procedural response to a sexual harassment allegation, OCR did not find that the District actually failed to address sexual harassment by the Teacher against the Student. This is because OCR investigated that issue independently and, as noted above, ultimately determined that sexual harassment did not occur.

For the reasons outlined above, OCR found that the District did not comply with Title IX requirements as to this issue.

Resolution:

In conclusion, OCR determined that the District did not provide an adequate procedural response to the Complainant's internal complaint. However, based on its own investigation, OCR found that the Teacher did not sexually harass the Student during the 2013-14 school year. Finally, OCR determined that the District's sex discrimination complaint procedures, as written, include several elements that do not meet the requirements of the Title IX regulations.

The District agreed to address the compliance concerns identified during OCR's investigation through signing a Resolution Agreement, a copy of which is attached. The Resolution Agreement requires the District to revise its sexual harassment complaint procedures and provide training to site and District-level administrators regarding the amount and type of reported information that should trigger a sexual harassment investigation.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Resolution Agreement. This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is informing the Complainant of the complaint resolution by concurrent letter. The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

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 District 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 a complaint with OCR 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, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR appreciates the courtesy and cooperation of District personnel during the resolution process. If you have any questions, please contact Julie Baenziger at (415) 486-5502, or me, at (415) 486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Attachment

Cc: Dr. Ruben Canales
Director, Human Resources