



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

December 9, 2015

Chris Evans
Superintendent
Natomas Unified School District
1901 Arena Boulevard
Sacramento, California 95834

(In reply, please refer to case no. 09-15-1424.)

Dear Superintendent Evans:

On June 18, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Natomas Unified School District (District). The Complainant alleged discrimination on the basis of sex.¹ Specifically, OCR investigated whether the District (1) failed to respond promptly and equitably to notice of the sexual harassment against the Student by another student in May 2015; and (2) failed to respond promptly and equitably to a subsequent internal complaint the Complainant made on June X, 2015 stating that the Student had been harassed against based on sex.

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

Under Article III, Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the allegation through a voluntary resolution agreement (Resolution Agreement). This letter summarizes the applicable legal standards, OCR's findings, and how the complaint was resolved.

¹ OCR previously notified the District of the names of the Complainant and Student and is withholding their names in this letter to protect their privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

I. 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. School districts are responsible under Title IX and the regulation 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.

Under the Title IX and the regulations, once a school district has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. The school district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the school district knew or reasonably should have known about the harassment; and (3) the school district fails to take appropriate responsive action. These steps are the school district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school district to take action.

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 school district must promptly conduct an impartial inquiry designed to reliably determine what occurred and provide a written notice of resolution. The response must be tailored to stop the harassment, prevent it from recurring, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed.

II. Factual Background

- During the time at issue in this complaint, the Student was attending XXXXXXXX Middle School (School) in the District.

Sexual Harassment Policies and Complaint Procedures

- The District's Assistant Superintendent of Student Services and Safety is its designated Compliance Officer, responsible for coordinating the District's response to complaints, including sexual harassment complaints, and for complying with state and federal civil rights laws. The Compliance Officer's contact information is included in the District's Uniform Complaint Procedure (UCP), discussed below, and on the District's website.

- The District provided OCR with a copy of its Board Policy (BP) 5145.7(a-c) “Sexual Harassment”, which prohibits sexual harassment of students at school or school-sponsored or school-related activities, and the corresponding Administrative Regulation (AR) 5145.7(a-f), which provides the District’s investigative and resolution process and timeline for student sexual harassment complaints.
- In addition, the District provided OCR with a copy of its Uniform Complaint Procedure (UCP), BP 1312.3(a-f), which states that the UCP will be used to investigate and resolve complaints alleging unlawful discrimination, including harassment, and several other categories of complaints. The corresponding AR 1312.3(a-l) provides the UCP’s investigative and resolution process and timeline.
- OCR identified some deficiencies in AR 1312.3 and the UCP, including that the application of the procedures to complaints against students, employees, and third parties, and their relation to off campus conduct, is not clearly articulated. In addition, the District’s UCP limits the information a complainant may receive regarding disciplinary action taken against a respondent in a manner which may prevent a complainant from being provided sufficient notice of outcome of his/her complaint. Although both AR 5145.7(a-f) and the UCP apply to peer sexual harassment complaints, the procedures do not reference each other, and complainants are not provided with a clear explanation of which procedure will be applied to such complaints.
- In addition, OCR identified concerns with AR 5145.7(a) because it does not include the preponderance of the evidence as the standard of review, and the UCP does not state that the respondent has an equal right to appeal an adverse determination. OCR also noted that the policies did not ensure that the involved students and/or their parents or guardians are informed at regular intervals of the status of the investigation, address conflicts, real or perceived, related to the investigator(s), disallow evidence of past relationships for the complainant, and discuss the training to be provided to complaint investigators.

Internal Sexual Harassment Complaint

- The Complainant stated that on April XX, 2015, she visited the Student’s classroom and observed another male student (Student II) sexually harass the Student. Specifically, the Complainant told OCR she observed Student II touch the Student on the shoulder and say “Happy Birthday [Student], you look really cute today,” switch his seat to sit closer to the Student, touch the Student on head, and repeat “Happy Birthday” in what the Complainant described as a “seductive” tone of voice. The Complainant stated that Student II also approached her and said “you’re going to be my new mother-in-law.” The Complainant told OCR that the Student had previously complained to her that Student II was “coming on” to him, but that at the Student’s request, she did not report these concerns to the School.
- The Complainant told OCR that the Student felt angry and embarrassed by Student II’s conduct. The Complainant stated that although Student II’s behavior did not negatively

impact the Student's academic performance, following the incident described above, the Student expressed that he did not want to go to the School.

- The Complainant told OCR that after observing Student II's conduct, she complained directly to one of the School's assistant principals, and later spoke with the Interim Principal about the incident by phone. In addition to her oral complaint, the Complainant stated that on May X, 2015, during the Student's Section 504 meeting, she and her fiancé raised their concerns regarding Student II. The District also acknowledged that the Complainant discussed her concerns regarding Student II with the Student's Section 504 team.
- The District provided OCR with documents related to the School's response to the Complainant's complaint, including copies of records from the District's student information system, PowerSource. The information provided indicated that on May XX, 2015, the School's Assistant Principal spoke with both the Student and Student II regarding the Complainant's allegations. The District stated the Assistant Principal counseled Student II on the District's prohibition against sexual harassment and directed him to immediately stop his conduct towards the Student.
- The information also indicates that the same day, the Assistant Principal contacted Student II's legal guardian, informed her of the incident and the District's prohibition against sexual harassment, and discussed how Student II's conduct could be addressed in counseling. The District learned in this conversation that Student II was in weekly counseling. The District stated that following her conversation with Student II's legal guardian, the Assistant Principal contacted the Complainant and provided her with an oral report of the outcome of her complaint. The Student's Powersource record reflects a phone call from the Assistant Principal to the Complainant on May XX, 2015. The Complainant disputed that she was contacted by the Assistant Principal.
- On June XX, 2015, the Complainant filed an internal UCP complaint with the District. The Complainant's UCP complaint alleged the same sexual harassment of the Student by Student II as had been reported to School staff. The District stated that the School's Interim Principal contacted the Complainant and her fiancé the same day, and reviewed the Assistant Principal's response to her complaint. However, the District acknowledged to OCR that it did not provide the Complainant with written notice of the outcome of her school-site or UCP complaint.
- During OCR's investigation, the District sought technical assistance on the adequacy of its response to the Complainant's sexual harassment complaint. In September 2015, OCR provided the District with information regarding Title IX's requirement for a prompt and equitable response to notice of potential sexual harassment, including conducting a timely investigation, and providing a complainant with written notice of the outcome of a complaint.
- The District stated that to date, the Complainant has not provided information regarding a recurrence of the harassing behavior. OCR did not receive any information from the Complainant or the District regarding recurrence of such behavior. The Complainant told

OCR that she transferred the Student to a new school in the District for the 2015-2016 school year.

III. Findings & Resolution

OCR found that the District's procedures were deficient because the application of the procedures to complaints against students, employees, and third parties, and their relation to off campus conduct, is not clearly articulated. In addition, the District's UCP limits the information a complainant may receive regarding disciplinary action taken against a respondent in a manner which may prevent a complainant from being provided sufficient notice of outcome of his/her complaint. Although both AR 5145.7(a-f) and the UCP apply to peer sexual harassment complaints, the procedures do not reference each other, and complainants are not provided with a clear explanation of which procedure will be applied to such complaints. In addition, OCR identified a problem with AR 5145.7(a) because it does not include the preponderance of the evidence as the standard of review, and the UCP does not state that the respondent also has the right to appeal an adverse determination. OCR also noted that the policies did not ensure that the involved students and/or their parents or guardians are informed at regular intervals of the status of the investigation, address conflicts, real or perceived, related to the investigator(s), disallow evidence of past relationships for the complainant, and provide information about the training to be provided to complaint investigator(s).

During the investigation, the District acknowledged that it did not provide the Complainant with a written notice of outcome and requested technical assistance from OCR to correct this violation prior to the conclusion of the investigation.

The District, without admitting any violation of federal law, has voluntarily agreed to enter into the enclosed Resolution Agreement with OCR to resolve the complaint. Under the terms of the Resolution Agreement, the District will issue written notice to the Complainant regarding the outcome of her internal complaint, and make specified revisions to its UCP and sexual harassment complaint procedure to comply with Title IX requirements. OCR is available to provide the District with technical assistance in implementing the provisions of the Resolution Agreement.

OCR has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, OCR is closing this complaint as of the date of this letter. OCR will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the District does not comply with the Resolution Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

09-15-1424

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights. Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank the District and the District's counsel, Roman Munoz, for their cooperation during this investigation. If you have any questions regarding this letter, please contact OCR attorney Kendra Fox-Davis at (415) 486-5418 or kendra.fox-davis@ed.gov.

Sincerely,

/s/

James M. Wood
Team Leader

Cc: Roman Munoz, Esq.

Enclosure