



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

July 21, 2016

Matt Huxley
Executive Director
Academy of Alameda
401 Pacific Avenue
Alameda, Ca 94501

(In reply, please refer to case no. 09-16-1194.)

Dear Executive Director Huxley:

On March 7, 2016, the U.S. Department of Education, Office for Civil Rights (OCR) notified you of a complaint against the Academy of Alameda (School). The complainants alleged that the School discriminated against their daughter (Student)¹ based on sex. The specific issues investigated by OCR were whether:

1. The Student was sexually harassed by other students and the School failed to respond appropriately and effectively to notice of the harassment; and
2. The School failed to respond appropriately and effectively to notice of sexual harassment of other students, resulting in a sex-based hostile environment at the School.

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 education programs and activities operated by recipients of Federal financial assistance. The School receives funds from the Department and is subject to Title IX and the regulation.

To investigate this case, OCR reviewed documentation provided by the School and the complainant, and interviewed the complainants. Under Section 302 of OCR's Complaint Processing Manual, an allegation may be resolved at any time when, before the conclusion of an investigation, a school expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the School informed OCR it was interested in resolving the complaint in this manner. The School entered into the attached agreement to resolve the

¹ OCR notified the School of the identities of the complainants and Student in its March 7, 2016 notification letter. We are withholding their identities here to protect their privacy.

complaint. Accordingly, OCR did not complete its investigation or reach conclusions regarding the School's compliance with Title IX. The facts OCR gathered during its preliminary investigation, applicable legal standards, and the disposition of the allegations are summarized below.

OCR's investigation revealed the following:

The School is a charter school authorized by the Alameda Unified School District (District). The School has an elementary school campus and a middle school campus. The middle school enrolled 504 students in the 2015-16 school year. In 2015-16, girls represented 45% of the student population. The School's mission, according to its charter, is to "empower students to be conscious contributors to their communities by equipping them with the critical thinking skills, knowledge, mindset, and personal qualities to be successful in high school and college."

The Student began attending the School at the start of the 2015-16 school year as a XXXXX grader. On October XX, 2015, the Student's mother emailed the Middle School Director (Director) that she had heard from the Student and her friends that several boys were "daily accosting" several girls, including giving them flat tires ("stepping on back of tennis shoe making targeted student trip"), putting arms around their waists, slapping their behinds, and pressuring them to be in boyfriend-girlfriend relationships. She emailed the Director again later that day, stating that two boys had been fighting in the park, and that one had falsely claimed the Student was his girlfriend; it was not clear from the message whether or how the fight was related to the Student. A few minutes later, the Student's father emailed the Director and Executive Director of the School that the Student, "had her shoes ripped off 5 times today and held from her," that the Student's grandmother had seen three boys chasing her, and that the Student was "in tears and not wanting to go to school." The complainants told OCR that they were not aware of alleged harassment prior to these communications.

That evening, the Dean of School Culture (Dean) emailed the Director and Executive Director that the Student's father had orally reported similar conduct to him. The email reflects that the Dean asked the Student's father to give her the names of the harassers as well as the girls being harassed. The Dean also emailed the Youth Advisor and asked him to obtain the students' names from the father the next day. His email indicated that he planned to meet with one of the students involved in the alleged fight.

The next morning (October XX), the Director wrote to the Student's mother, "I would like to meet with you to discuss this very concerning issue. I assure you this behavior is unacceptable and we are following up. I will call you shortly to set up this meeting." The parents and Director met that day, as memorialized in a November X email from the Student's father to the Director.

In an October XX, 2015 Incident Report submitted to the School by the Student, the Student complained of behavior by boys that included: fighting over her; touching her stomach and kicking, kneeling, and slapping her behind; touching her breast on one occasion, possibly

accidentally; “flat tires”; spreading rumors that she is dating someone; and persisting in talking to her even when she asked them to stop. She named several boys in her complaint. She also wrote that boys had slapped and commented on other girls’ behinds. The same day, the complainants removed the Student from the School and enrolled her in another District school.

In a November X, 2015 calendar invite, the Executive Director asked the Director, Dean, and Youth Advisor to meet the next morning (a Monday) to “review the sexual harassment incident that occurred last week and discuss next steps.” The next morning, the Executive Director emailed a District employee to request the discipline records of two students to, he wrote, determine whether they had a history of sexual harassment.

In a strongly worded email later that day, the Student’s father accused the Executive Director of ignoring the Student’s complaint. The Executive Director responded that he had been working with the Director throughout the process. He wrote, “[W]e took this very seriously...We conducted a thorough investigation on Friday...and there will be significant consequences for students who were responsible for sexual harassment...Both [the Director] and I were going to call you...to meet again...I was looking forward to talking to you about the actions we are taking and to say how sorry I was for the boys’ actions.”

Also that day, the Student’s mother sent the Director an email stating that a boy had grabbed the arm of one of the Student’s friends and forced her to talk about why the Student was not at school. The next day, the School Director responded, acknowledging receipt of the email and stating that she had “been in communication with all the parents of the students involved as well as our staff.” In addition, she wrote, “as discussed before, we are coming up with a plan to inform all students about sexual harassment and how to respect each others’ physical and emotional boundaries.” On December X, the Student’s father emailed the Director, requesting an update on the student education component; the Director responded that the School was meeting “with an organization to look at best ways to better educate and empower our students around sexual harassment issues.”

According to the School, administrators took statements from several students immediately after meeting with the Student and her parents on October XX, including witnesses identified through other students. The School provided Incident Reports from several additional girls dated October XX. One girl wrote in her report that a particular boy “always tries to flirt” with her and her friends, including the Student, and that the boy had kicked and kneed her and the Student’s behinds, and liked to follow them. She also wrote that about the negative impact of the harassment on the Student’s relationship with the boy she was dating. Another girl wrote in her report that a particular boy had been kicking the Student’s behind, and that a boy who wanted to date the Student became upset and persisted even after the Student said no. She wrote that she had twice seen another boy touch another Student’s behind with his hand, and that another boy had tried to trip both her and the Student, but stopped when they asked. A third girl wrote that she had seen a boy poking or slapping the Student’s stomach, pulling on her backpack, and “annoying” her. She wrote that she told the boy to stop “because [the Student] won’t speak up, and when she was telling [him] to stop, he was ignoring her.” This

statement also notes that the Youth Advisor once told the boy to stop poking the Student in the stomach. About another boy, this girl wrote that he had pulled her backpack and called her “the b word,” tried to hug the Student, and touched the behind of another girl.

The School provided handwritten notes of interviews with an uncertain number of boys accused of harassment. Those notes reflect that the boys acknowledged touching girls, but generally believed the behavior was consensual and/or mutual. For example, the notes state, “I play stomach wars with [the Student. S]he does it back. We have fun. Talked about crushes [on Instagram]. And we kicked butts for...play. We both laughed.”

According to the School’s statement, during the course of this investigation, the School Director also met with the parents of another student identified as a target of harassment.

Disciplinary reports provided by the School show that:

- a sixth grade boy was suspended on October XX and October XX for fighting;
- a sixth grade boy was suspended on November X and X for “disruption” and “inappropriate contact”; his electronic discipline record states that he “participated in unwanted inappropriate touching of other students. His actions have made students feel very uncomfortable. He continued to act on this behavior despite being asked several times to stop”;
- a sixth grade boy was suspended November X and X for “disruption” and “inappropriate contact”; his electronic discipline record states that the “school’s finding were that [he] was involved in slapping female students’ butts and making statements...specifically stating, ‘that ass’”; and
- an 8th grade boy was suspended on October XX for “sexual harassment””; the incident description states that he “approached two girls after school [the previous day] and talked about very inappropriate and sexual things.”

The School also provided Behavior Contracts for two students. These contracts state, in part, “I have learned what behaviors can constitute sexual harassment, and moving forward, I will not engage in any [such] behaviors.” The contracts state that the students will work with an administrator to repair their relationships with the students affected. The students and their parents signed to acknowledge receipt of a Sexual Harassment Information Sheet, which accurately defines sexual harassment. The School provided documentation of meetings with parents of at least one of these students.

On November X, 2015, the Dean of School Culture sent an email to all School staff asking that they be alert to possible sexual harassment. The email reads, in part, “It seems that there have been a number of incidents...of students participating in inappropriate touching (poking each other, kicking and hitting each other on the butt). I wanted to make everyone...aware that these incidents are happening and please be on the lookout...and refer the students to me or [the Youth Advisor]. We are currently looking into possible advisory lessons as well as assemblies addressing...sexual harassment.”

The School provided evidence that during the spring 2016 semester, School administrators actively sought an organization or individual to lead a student assembly on sexual harassment, and relevant curriculum. This evidence included, for example, email correspondence with advocacy organizations and officials at other schools, minutes from leadership meetings, and printouts of sample curricula.

The School's April 25, 2016 newsletter consisted primarily of a letter from the School Director to families announcing the launch of a 3-part lesson series for students about sexual harassment. According to the newsletter, the lessons occurred during advisory classes, and were geared toward understanding what constitutes sexual harassment, its impact on others and the school community, what students should do if they experience harassment, and differentiating between flirting and harassment. The newsletter included links to the presentations made in the first lesson, the School's harassment policy, and other resources about harassment. OCR's review of the presentations showed they differed by grade level, with each covering definitions of sexual harassment, types of behavior that may constitute sexual harassment, factual scenarios, the impact of harassment on targets, and how students may respond to harassment. The letter states that the School would build on the lessons in the upcoming school year.

The School provided some documentation of nine other alleged instances of possible sex-based harassment of students during the 2015-16 school year. These include additional incidents of boys slapping girls' behinds, use of the word "bitch," suggestions that a student's gender was ambiguous, sexually explicit texts from an unidentified sender, and one instance of a boy exposing himself. The documentation provided by the School is incomplete and does not fully memorialize the School's response to these reports; however, the documentation provided shows that the School typically conducted some investigation, including taking witness statements, and that some incidents resulted in discipline, apology letters, and/or other interventions.

The School's *Nondiscrimination/Harassment Policy* prohibits discrimination, including harassment, based on sex and gender, among other characteristics, and designates the Executive Director or designee to receive and respond to complaints and inquiries. The Policy states that the Executive Director or designee will immediately investigate and, where harassment has occurred, "take prompt, appropriate action to end the harassment and address its effects on the victim." It also states the Executive Director will advise the victim of any other remedies that may be available, and refer the matter to law enforcement where required. The School's *Harassment, Intimidation, Discrimination & Bullying Policy* prohibits discrimination, including harassment, based on gender, gender identity, and gender expression, among other characteristics. It states that the School will make reasonable efforts to prevent discrimination, including harassment, and will investigate, respond, and address any reports in a timely manner. It obligates staff who witness discriminatory acts to immediately intervene, if safe, and report them. The policy encourages all other members of the school community to report incidents. It encourages students who are targeted to immediately contact a teacher, counselor, the Executive Director, or other staff person. Attached to the policy is a complaint

form; however, the policy makes clear that the form is not required. The policy specifies that the School will follow its Uniform Complaint Procedure in responding to alleged conduct based on a protected class.

The Uniform Complaint Procedure similarly designates the Executive Director to investigate and resolve complaints. The UCP states that, within 60 days of receipt of a complaint, the school will send a written report to the complainant that includes the findings of fact, conclusions of law, disposition of the complaint, rationale for the disposition, corrective actions, and notice of the right to appeal or file with OCR. The School's *Student Suspension, Expulsion, and Involuntary Transfer Policy* states that students in grades 4-12 may be suspended or expelled for sexual harassment.

The School's 2015-16 Family Handbook included a prohibition of sexual harassment; a statement that the School does not discriminate based on sex; the *Harassment, Intimidation, Discrimination & Bullying Policy* in its entirety; the UCP Annual Notice; and notice that sexual harassment may result in suspension or expulsion. According to the School, the policies and procedure are also available to students and parents on the school's website portal.

According to the School's narrative response to the allegations in this complaint, the School's administrative team is responsible for investigating complaints of sexual harassment at the middle school, including the Executive Director, the Middle School Director, the Dean, and the Youth Advisor.

Legal Standards

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment is unwelcome conduct of a sexual nature and is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual violence, sexual battery, and sexual coercion.

When a student or third party sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program. If a recipient knows or reasonably should know about student-on-student or third party harassment that may create a hostile environment, Title IX requires the school to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects. These duties are a school's responsibility, regardless of whether a student

has complained, asked the school to take action, or identified harassment as a form of discrimination. If, upon actual or constructive notice, a school delays responding to allegations of sexual harassment or responds inappropriately, the school's own action may subject a student(s) to a hostile environment. If it does, the school will be required to remedy the effects of both the initial sexual harassment and the effects of the school's failure to respond promptly and appropriately. A school's obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

To carry out these requirements, schools are required to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). Title IX does not require a school to provide a separate grievance procedure for such complaints; however, any procedures used to adjudicate complaints, including disciplinary proceedings, must afford a prompt and equitable resolution. OCR examines a number of factors in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination 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 major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

The regulations additionally require, at 34 C.F.R. § 106.8(a), that schools designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that schools notify students, parents, and employees of the name or title, office address, and contact information of the designated employee(s). In addition, schools must notify all students and employees of the email address of the Title IX Coordinator(s). The school must ensure that employees designated to serve as Title IX coordinators have adequate training or experience in handling sexual harassment complaints and in the operation of the school's grievance procedures. All persons involved in implementing a school's grievance procedures, including investigators, must have training or experience in handling complaints of sexual harassment, as well as training in the school's grievance procedures and applicable confidentiality requirements. The school's website must include complete and current information about the Title IX Coordinator. If a school designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities and one coordinator should be designated as having ultimate oversight, while the others should have titles showing that they are in a deputy or supporting role to the senior coordinator.

Further, 34 C.F.R. § 106.9 of the regulation requires schools to take specific and continuing steps to notify applicants for admission and employments, student and parents, employees, sources of referral of applicants, and all unions or professional organizations holding collective

bargaining or professional agreements with the school that it does not discriminate on the basis of sex in its education programs and activities, including with respect to employment, and that it is required by Title IX not to discriminate in such a manner. The notice must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. 106.9(b), requires schools to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees. The notice must identify and include contact information, including the name, address, phone number and email, for the Title IX Coordinator. OCR recommends that the notice be prominently posted on school Web sites and at various locations throughout the school or campus and published in electronic and printed publications of general distribution.

Analysis

OCR's preliminary investigation raised concerns that the School may not have responded appropriately and effectively to all allegations of sexual harassment of which it had notice during the 2015-16 school year. The evidence gathered showed that the School responded promptly to notice of harassment of the Student by investigating, developing interventions for at least some of the alleged harassers, notifying the complainants of at least some of the School's responsive actions, and providing school-wide instruction. However, further investigation would be necessary for OCR to confirm whether the School: adequately investigated all instances of alleged sex-based harassment of which it had notice; where harassment was revealed, took steps to stop it, prevent its recurrence, and address the impact on the students affected; provided adequate written notice to the complainants and other parents about its investigation and response; and has adopted procedures for responding to sexual harassment complaints that comply with Title IX. Based on the evidence gathered, OCR also had concerns that the School may not have adequately trained and notified the School community of the individual it designated to coordinate its compliance with Title IX.

Prior to the completion of OCR's investigation, the School entered into the attached agreement to resolve the allegations in the complaint. In summary, the agreement requires the School to: issue a written response that complies with Title IX to each allegation of sexual harassment of which the School had notice during the 2015-16 school year, including allegations made by the complainants; revise any complaint procedures applicable to sex-based harassment if needed to comply with Title IX and disseminate to the School community; develop a written description of the Title IX Coordinator's duties and appoint a person with appropriate training to that role; inform the School community of the coordinator's identity and contact information through a notice of nondiscrimination that is compliant with Title IX; conduct investigative/sexual harassment training for administrators; and continue to provide recurring, age-appropriate student instruction on sexual harassment.

OCR will monitor the School's implementation of the resolution agreement. When fully implemented, the resolution agreement is intended to address all of OCR's compliance

concerns in this investigation. OCR will monitor the implementation of agreement until the School is in compliance with the Title IX and its regulation.

OCR is closing this complaint as of the date of this letter, and notifying the complainants simultaneously. 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. The complainants may have the right to file a private suit 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 complainants may file another complaint 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact OCR attorney Suzanne Taylor at 415-486-5561 or suzanne.taylor@ed.gov.

Sincerely,

/s/

Katherine Riggs
Acting Team Leader

Enclosure

cc: XXXXX XXXXXXXX, Attorney for School (email only)