



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

August 18, 2017

Robert J. Voors, Ed.D.  
Superintendent  
Glendora Unified School District  
500 N. Loraine Avenue  
Glendora, California 91741

(In reply, please refer to case no. 09-16-1430.)

Dear Superintendent Voors:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of a complaint filed against the Glendora Unified School District (District). The Complainant, the parent of a student (Student)<sup>1</sup> in the District, alleged that the Student was subjected to harassment on the basis of sex by peers at XXXXXX Elementary School (School) and that the District and School failed to provide a prompt and equitable response. In response to this allegation, OCR investigated the following issues:

1. Whether the District has:
  - a. disseminated a notice of nondiscrimination on the basis of sex as required by 34 C.F.R. § 106.9;
  - b. appointed a Title IX Coordinator as required by 34 C.F.R. § 106.8(a); and
  - c. adopted policies and procedures that provide for prompt and equitable response(s) to sexual harassment, including sexual violence complaints and reports as required by 34 C.F.R. § 106.8(b), and
2. Whether the District provided the Complainant with a prompt and equitable resolution to her complaint that the Student was subjected to harassment on the basis of sex, and whether any failure to do so by the District allowed the Student to be subjected to a sexually hostile environment that denied or limited his ability to participate in or benefit from the school's program.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, which prohibit discrimination on the

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<sup>1</sup> OCR informed the District of the Complainant's and Student's identities at the beginning of the investigation. Their identities are withheld in this letter in order 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.

basis of sex, including sexual and gender-based harassment, in education programs or activities operated by recipients of Federal financial assistance. The District receives funds from the Department, and is subject to Title IX and its implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District, and by interviewing the Complainant. Before the investigation was concluded, the District expressed an interest in resolving the allegation, however prior to the District's expressed interest in resolving the allegation, OCR gathered evidence by reviewing information including significant documentation provided by the District, as well as by interviewing the Complainant. As a result of the information provided, OCR was able to make final determinations regarding some of the issues, but not all.

OCR concluded that with regard to issue 1, the preponderance of the evidence established that the District is not in compliance with the administrative requirements of Title IX. With regard to issue 2, OCR has concerns regarding whether the District provided the Complainant with a prompt and equitable resolution to her complaint of harassment on the basis of sex and whether there existed a hostile environment. On August 18, 2017 the District entered into a Resolution Agreement to resolve the areas of noncompliance and to provide the Complainant with a prompt and equitable resolution to her complaint.

Accordingly, this letter summarizes the applicable legal standards, relevant facts obtained during the investigation to date, and OCR's resolution of each issue investigated in the complaint.

### Legal Standards

Under Title IX, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). A district may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides, 34 C.F.R. §§ 106.31(a)-(b), or subject students to separate or different rules of behavior, sanctions, or other treatment, 34 C.F.R. § 106.31(b)(4). All students are protected from sex-based discrimination under Title IX.

Harassment of a student on the basis of sex can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Title IX prohibits discrimination resulting from harassment that is gender-based or based on sex-stereotyping. Such harassment may include verbal or nonverbal acts, or physical aggression, intimidation, or hostility based on sex or sex stereotyping. Thus, harassment of students for failing to conform to stereotypical notions of masculinity and femininity constitutes sex discrimination.

When a student or third party harasses another student on the basis of gender, the harassing conduct creates a hostile environment if the conduct is sufficiently serious – severe, persistent, or pervasive – that it interferes with or limits a student’s ability to participate in or benefit from the recipient’s program. In determining whether a hostile environment has been created, OCR considers the totality of the circumstances, including the type of harassment; the degree to which the conduct affected one or more students’ education; the context, nature, scope, frequency and severity of the conduct; the location of the harassing incidents; and the identity, age, number, and relationships of the persons involved. The conduct is assessed from both a subjective and objective perspective.

School 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 engages in harassment on the basis of sex that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the program, the district is responsible for the discriminatory conduct whether or not it has notice.

The Title IX regulation establishes procedural requirements that are important for the prevention and correction of sex discrimination, including gender-based 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]).

Title IX requires the recipient to respond upon notice of the conduct in a prompt and equitable manner regardless of whether a student has complained, asked the recipient to take action, or identified harassment as a form of discrimination. To meet its duty to respond in a prompt and equitable manner to a hostile environment based on sex or gender, a recipient must take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. If, upon actual or constructive notice, a recipient delays responding to allegations of harassment on the basis of sex or gender or responds inappropriately, the recipient’s own action may subject a student(s) to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial harassment on the basis of sex or gender and the effects of the recipient’s failure to respond promptly and appropriately.

#### Facts Gathered To Date

On August 26, 2016, the District indicated an interest in voluntary resolution, prior to the conclusion of the investigation. As such, OCR has reviewed and analyzed the evidence gathered up until such date, pursuant to Case Processing Manual Section 302, and determined that that

such a resolution was appropriate. The following findings of fact were reported to OCR by the Complainant and from the District's initial data response.

During 2015-2016, the Student was enrolled in the XXX grade at the School. The Student was harassed on two separate occasions during the school year based upon his gender including his style of dress and the activities he is interested in. The Complainant told OCR that the Student wears skinny jeans, suspenders, and bowties and is a performer and participates in the School's show choir. Additionally, the Complainant told OCR that the Student did not play sports with the other boy students during recess or lunch, and that he instead preferred to sit alone or with a few other students singing or drawing.

On February XX, 2016 a female student (Student A) asked the Student at lunch why he didn't have a girlfriend. Student A stated she believed the reason was that he was gay. The Complainant told OCR that the Student felt embarrassed and upset, and that the Principal was aware of the incident because a teacher told her and she responded by instructing Student A and two other students to apologize to the Student. The Complainant was never informed by the School that the incident had occurred, and only learned about it from the Student after school.

The Complainant states that she contacted the Principal and that she told the Complainant that she had instructed the students to apologize to the Student. The Complainant told OCR that she told the Principal to contact her if a similar incident occurred again. The District's data response states that once the Principal was made aware of the incident she responded by informally investigating it and holding a conference with Student A. The District states that the Principal gave Student A two days of recess detention and contacted Student A's parents. The District provided OCR with a copy of the Discipline Record for Student A which states that Student A admitted asking the Student if he was gay, that she alleged that she also stated "I'm just joking," and that she acknowledged to the Principal that she would not have found the question funny if it had been asked of her. According to the District, no other students were involved in this incident.

On May X, 2016, four students who were not involved in the previous incident in February allegedly taunted the Student and spread a rumor that the Student is gay and that his close male friend was his boyfriend. The Complainant told OCR that the Student said the rumor spread "throughout the playground" including among different classes and that he was extremely upset. The Complainant told OCR that the Student complained about the rumor to the Principal, and that the Principal responded by chastising the Student for making the incident "bigger" than what had happened, as well as told the Student that he needed to move forward and forget about it. The Complainant told OCR that the Student told her what happened the same day it occurred, but that she was again not immediately informed by the District. The Complainant told OCR that she waited more than a week before calling the Principal to inquire what action was taken

against the students. According to the Complainant, the Principal responded that she made the students apologize to the Student and agree that they wouldn't engage in such conduct again. The Complainant alleges that the Principal said she did not think the incident was serious and that it stemmed from the first incident and involved many of the same students; as well as that she referred to the incident as a "nasty game of telephone," in that one student told another who told another, etc. The Complainant told OCR that she informed the Principal that it was not a game and that the Student was being harassed based on his gender including style of dress and activities he prefers to engage in. According to the Complainant, the Principal allegedly stated that maybe she mishandled the situation because she wasn't sure how to handle it and didn't want to "put the spotlight" on the Student.

The District's narrative response states that the Principal was made aware of the May X, 2016 incident when the Complainant contacted the Principal's office and "claimed gender harassment," and that the Principal followed up with an investigation and that corrective action was taken. The District's response does not specify if the Complainant's phone call was the first time the Principal was made aware of the incident. The District's response also does not specify the date of the Complainant's phone call to the Principal; however, the discipline records for the students involved in the incident reflect that they were updated by the Principal on May X, 2016. The District's narrative data response states that upon completion of the investigation, the Principal contacted the Complainant and informed her that discipline was taken against the students; that the Complainant asked the Principal if there was an incident report; and that the Principal responded that there was not, but that there was a report and documentation in each student's file that she was not permitted to share with the Complainant due to student privacy laws.

The student discipline records provided by the District show that Student A was not involved in the May X, 2016 incident. The Discipline records for Students B, C, D, and E, who were involved in the May X, 2016 incident, indicate that Student B was given a reflective writing assignment, recess detention, and phone call to her parents; and that Students C-E were given reflective writing assignments and phone calls home (there is no indication in the record that they also received recess detention). The records also indicate that that Students C-E were found to have passed on the rumor, whereas Student B was found to have started the rumor and begun its transmission to several other students and then denied having done so.

The Complainant told OCR that after her phone conversation with the Principal, she called the District's Assistant Superintendent to complain about the Principal's response and about the Principal's alleged comments. According to the Complainant, the Assistant Superintendent told her that because the Student was not physically harmed, the incident was not considered bullying and that it was up to the teachers and Principal to determine how to handle "these types" of student interactions. The Complainant stated that she was concerned by the Assistant

Superintendent's alleged statement that the District did not have standard procedures for handling situations involving harassment based on gender.

The District's narrative response states that "the Complainant did not contact the District Office in regard to this incident." It is not clear if this statement refers to the Complainant's allegation that she spoke with the Assistant Superintendent and complained about the Principal's response to the May X, 2016 incident.

### Analysis

The Complainant stated that the Student's interests and style of dress did not conform with sex stereotypes for XXXX year-old boys, such that he wore skinny jeans, suspenders and bowties and participated in the School's Show Choir. She stated that the Student also did not play sports with other boy students.

The Complainant and the District agree that on February XX, 2016, Student A called the Student gay, as well as stated that she thought he was gay. The Complainant and the District also agree that on May X, 2016, four students during lunch recess spread a rumor that the Student is gay and that his close male friend was his boyfriend. The Complainant told OCR that the Student considered being called "gay" derogatory; that it damaged his friendship with the other boy student such that they no longer socialized together at lunch time; that the Student was emotionally distraught after the incidents occurred and felt lonely eating by himself; and that he also stopped singing and drawing at lunchtime.

The Complainant and the District agree that had notice of both incidents, including that the comments were directed at the Student because of his gender. With regard to the February XX, 2016 incident, the evidence shows that a teacher informed the Principal shortly after it happened that the Student was upset by Student A's question and comment that he didn't have a girlfriend and was "gay," and the Complainant contacted the Principal and spoke with her on the same day. With regard to the May X, 2016 incident, the Complainant told OCR that the Student informed the Principal directly after it happened that other students had spread a rumor that he was gay and that his friend was his "boyfriend." The evidence to date does not establish whether the Principal was made aware of the incident by the Student on the day it happened, or on the day that the Complainant called the Principal, as well as does not establish what date the Complainant called the Principal. However, the discipline records for the students involved indicate that they were updated by the Principal on May X, 2016. This establishes that the District was on notice as of the incident no later than that date.

Pursuant to Title IX, once a school district has notice of possible gender-based harassment between students based on a student not conforming to sex stereotypes, it is responsible for

determining what occurred and responding appropriately. The district must respond promptly and equitably. These duties are a district's responsibility, regardless of whether a student has complained, asked the district to take action, or identified harassment as a form of discrimination. If a district responds inappropriately, the district will be required to remedy the effects of both the initial harassment and the effects of the district's failure to respond promptly and appropriately.

Here, in response to the first incident of gender-based harassment, the evidence shows that the Principal imposed discipline on the harassing student (Student A) and documented it in Student A's discipline record. The evidence also shows that after being contacted by the Complainant, the Principal informally investigated the second incident of harassment by holding conferences with the students; student discipline records provided by the District show that each student was required to complete a reflective writing related to their actions and their parents were called. The Discipline records also show that the student who initiated the rumors was required to serve four days of recess detention. The Principal verbally informed the Complainant of the informal investigative findings of the May 2016 incident.

The facts gathered to date show that the Principal's response to the first incident of gender-based harassment was effective in preventing Student A from engaging in further harassing conduct. However, even though Student A did not engage in further harassing conduct, the Student was subjected to a second incident of gender-based harassment several months later at the School. Although the students involved in the second incident did not include Student A, the second incident of harassment involved similar unwelcome and potentially derogatory language (the Student being referred to as "gay") and more students participated in the harassment than during the first incident. Also, according to the Complainant, the rumor spread to students on the playground who were in different classes than the Student. Nevertheless, within a week of the second incident the Principal imposed discipline on the harassing students and documented the discipline in the students' records.

OCR found that the Principal's response was prompt in that in both incidents, the Principal met with and imposed discipline on the harassing students and notified their parents within one week of the gender-based harassment. However, OCR has also identified areas of concern with regard to the Principal's response. With regard to the May X, 2016 incident, OCR is concerned that it involved similar language targeting the Student but with an increased number of students involved; this could have been an indication to the Principal that her response to the previous incident focusing solely on discipline may not have been effective to prevent the recurrence of the conduct. There evidence gathered to date also does not indicate that the Principal followed up with the Student to address any effects the incidents of harassment had on him, including asking him whether the harassment has or had occurred again. The Complainant stated that the harassing comments resulted in the Student eating alone and having his close friend refuse to sit

with him at lunch time; this raises concerns that the effects of the harassing comments may be ongoing. Additionally, the documentation provided by the District does not indicate whether it made a determination regarding whether the incidents individually or combined resulted in the Student being subjected to gender-based harassment that was so severe, persistent or pervasive that it interfered with or limited his ability to participate in or benefit from the school's program and if so, what remedy would be appropriate. Additionally, OCR is concerned that there is no evidence to date that the Complainant was informed that she could file a complaint with the District's Title IX Coordinator.

Prior to the District expressing its interest in entering into a voluntary Resolution Agreement, OCR reviewed the written response provided by the District but had not yet interviewed any District or School administrators or faculty. Therefore, in order to complete the investigation of this complaint, OCR would need to interview individuals at the School including the Student, possibly his male friend, the Principal, other teachers and students who were present during the incidents, the teacher who interviewed the students, and others who participated in the Principal's investigation; as well as interview individuals at the District, including the Title IX Coordinator and the Assistant Superintendent regarding the Complainant's complaint to him. OCR would also need to review documents regarding any other incidents of alleged harassment and the School's response to determine whether a hostile environment was created and whether the District's response was sufficient to address any discriminatory effects on the Student.

### Conclusion

On August 18, 2017, the District entered into the enclosed Agreement with OCR that is aligned with the allegations investigated, and the information obtained by OCR during the investigation. In summary, the Agreement requires the District to (1) revise and distribute its Notice of Nondiscrimination, and sex-based harassment policies and procedures; (2) train District and the School's administrators, staff, and other individuals with responsibility for investigating, reporting, and responding to harassment based upon sex including gender stereotyping, and distribute to all individuals at the training a document containing a summary of the District's revised policies and procedures for responding to complaints of sex and gender-based harassment as well as other resources; and (3) prepare a written response for the Complainant outlining the steps it took to respond to her allegation that the Student was subjected to gender-based harassment and the District failed to provide a prompt and equitable response when notified of the harassment. OCR will monitor the implementation of the Agreement until the District is in compliance with Title IX, 20 U.S.C. § 1681(a), and its implementing regulations, 34 C.F.R. §§ 106.31(a)-(b).

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 closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. 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 Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, retaliate, 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 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank the District for its assistance in resolving this complaint. In particular, we appreciate the assistance of Ms. Ann Keyes. If you have any questions please contact OCR attorneys Nezhia Burkes at 415-486-5592 or [nezhia.burkes@ed.gov](mailto:nezhia.burkes@ed.gov), or Matthew Wood at 415-486-5591 or [matthew.wood@ed.gov](mailto:matthew.wood@ed.gov).

Sincerely,

/s/

Anamaria Loya  
Chief Regional Attorney

Enclosure