



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

April 13, 2017

Winfred Roberson  
Superintendent  
Glendale Unified School District  
120 E Cerritos Avenue  
Glendale, California 91205

(In reply, please refer to case no. 09-16-1960.)

Dear Superintendent Roberson:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Glendale Unified School District (District). The Complainant alleged that the District discriminated against students on the basis of sex.<sup>1</sup> Specifically, OCR investigated the following issue:

- Whether students at XXXXX XXXXXX High School (School) were subjected to a hostile environment on the basis of sex when school staff failed to respond to an incident that occurred in June 2016 in which two male students were harassed by their peers, because they were engaging in activities that did not conform to gender stereotypes.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The School is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the District, and by interviewing the Complainant and a student witness to the June X, 2016 incident. Under OCR's *Case Processing Manual* (CPM) at Article III, Section 302, a complaint may be resolved at any time, when before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint, and OCR determines it is appropriate to do so. On December 7, 2016, the District told OCR that it was interested in resolving the complaint. OCR agreed that it was appropriate to resolve through a voluntary resolution agreement reached during an investigation (Resolution Agreement). This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the Resolution Agreement reached with the District.

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<sup>1</sup> OCR previously provided the District with the identity of the Complainant. We are withholding her name from this letter to protect her privacy.

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

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt 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 and equitable 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, 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. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including gender-based harassment. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and 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]). The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 106.8[a]).

## **Findings of Fact**

On June X, 2016, the last day of the 2015-16 school year, there was a school-wide assembly in the School's outdoor amphitheater. At the assembly, two male students, Students A and B, were sitting with friends and applying make-up.

Several student witnesses who were interviewed by School staff on or about August XX, 2016, stated that a group of students called Students A and B derogatory names, including an Armenian slang word for "faggot," and threw carrots and bottles at Students A and B and their friends during the assembly. According to the School interview notes with student witnesses and an OCR interview with Student C, a substitute teacher (Substitute Teacher) was supervising the assembly and sent Students A and B to the office, but did not speak to the students throwing the carrots and bottles or ask them to stop.

Students A and B met with the former Assistant Principal, who is the current Principal of the School (Principal). When Students A and B returned to the amphitheater, they told Student C and Student D, another witness to the incident, that they had explained to the Principal that male students were throwing food and bottles at them and calling them names. Students A and B alleged that the Principal either suggested that they should take off the make-up or asked them to do so. Students A and B washed the make-up off before returning to the assembly.

Student E informed the School that he followed Students A and B and spoke to them after they left the office. According to School interview notes with Student E, on the way back to the assembly, other students called Students A, B, and E the same slur. Interview notes do not include whether School staff overheard the second set of slurs.

On or about June X, 2016, Students C and D submitted a statement to another Assistant Principal (Assistant Principal) expressing concern that school administrators had acted with bias in their interactions with Student A and B related to the June X, 2016. They provided information about witnesses who observed the incident and about what they had observed, namely that Students A and B were sent to the office, while the students who allegedly threw objects and made offensive remarks were not spoken to or disciplined. They also alleged that on a previous occasion the Principal had informed Student B that he was not permitted to wear a skirt to school.

OCR reviewed the School's dress code and found that there are rules regarding the length of skirt that may be worn but no prohibition on wearing skirts to school.

## *District's Response*

On June X, 2016, the Complainant, who is Student C's parent, wrote to the Superintendent by email to express her concern about the June X, 2016 incident and the School's response. She also asked for the Superintendent to address the allegation that the Principal had prohibited Student B from wearing a skirt to school. On the same day, the Complainant contacted the Assistant Principal to express similar concerns.

The Superintendent responded on June X, 2016, asking when the Complainant was available to speak. On the same day, the Complainant responded with her availability and phone number, but she alleges that the Superintendent did not return her call.

On July X, 2016, the Complainant emailed the Superintendent and asked for an update on the investigation into her complaint. On July X, 2016, the Complainant emailed the Assistant Superintendent of Human Resources (Assistant Superintendent) asking about the status of the complaint investigation. The Complainant informed the Assistant Superintendent that students were concerned about how they would be treated based on the incident and feared retaliation by the Principal. OCR reviewed a series of emails between the Assistant Superintendent and the Complainant starting on July XX, 2016 wherein the two attempted to coordinate a meeting, but no teleconference occurred before August X, 2016, the start of the 2016-2017 school year.

On August XX, 2016, the Complainant emailed the Assistant Superintendent again to request a meeting. The Complainant informed OCR that at 4:00 pm on the same day, she spoke with the Senior Director of Secondary Services (Senior Director) about her complaint. The Senior Director informed the Complainant that she had interviewed the Principal but had not interviewed any students or the Substitute Teacher. The District has not provided any notes from the Senior Director's interview with the Principal.

On or about August XX, 2016, the Principal and Assistant Principal interviewed students regarding the June X, 2016 incident. According to District documents, several student witnesses described how Students A and B were applying make-up and students threw carrots and bottles at and directed derogatory remarks at Students A and B. The notes state that the witnesses could not identify the students engaged in the conduct because the students were behind them and they did not know the students' names or remember the students' faces.

The Principal and Assistant Principal also interviewed another student. The interview notes taken by the School include that he "probably offended someone" at the assembly, "probably" says the slur on a "daily basis w/ my friends and cousins", and that he and his friends had been "mad" at several students at the assembly.

Student C informed OCR that she felt "intimidated" during her interview with the Principal and Assistant Principal because she felt that they were trying to convince her that the School acted appropriately in responding to the incident. She also stated that the Principal denied making any statement to Students A and B with respect to removing the make-up.

On August XX, 2016, the Complainant filed a complaint with OCR. According to the Complainant, on August XX, 2016, the Senior Director left a voice message for the Complainant, letting her know that the School followed up on the complaint and spoke to all relevant students. The Complainant did not return the call.

#### *District's Policy and Procedures*

Relevant to OCR's investigation, Board Policy (BP) 5145.3 states the District's policy against discrimination based on actual or perceived sex, gender, or gender expression, among other

protected bases, and Administrative Regulation (AR) 1312.3 states that the Uniform Complaint Procedure (UCP) is the District's grievance procedure for investigation and resolution of discrimination complaints. AR 1312.3 identifies the Assistant Superintendent for Educational Services and the Director of Categorical Programs as the employees responsible for coordinating the investigation of sex discrimination complaints, though they may assign another compliance officer to investigate and resolve complaints.

According to AR 1312.3, within 10 business days after the compliance officer receives the complaint, the investigation shall begin. Within one business day of initiating the investigation, the compliance officer shall provide the complainant the opportunity to present information to support allegations for the complaint. To investigate a complaint, the compliance officer will collect all available documents, records, notes, or statements related to the complaint and individually interview all available witnesses with information pertinent to the complaint. A final written decision will be sent to the complainant within 60 calendar days of the District's receipt of the complaint. The District's final written decision shall include findings of facts based on the evidence gathered, conclusions of law, disposition, rationale for such disposition, and corrective actions, such as individual remedies and systemic measures the school has taken to eliminate a hostile environment and prevent recurrence.

### **Analysis**

Title IX prohibits gender-based discrimination and harassment, including of students for failing to conform to stereotypical notions of masculinity and femininity. A district may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious—severe, persistent, or pervasive—to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. The evidence gathered to date shows that on June X, 2016 the School received notice of allegations that one or more students directed derogatory names and threw objects at Students A and B while they were applying make-up during the June X, 2016 assembly. The evidence gathered to date shows that Students A and B were sent to the Principal's office and that there is conflicting evidence regarding what the Principal stated to Students A and B during the office meeting. On June X, 2016, the Complainant submitted a written complaint by email to the Superintendent regarding the School's response to the assembly incident and informed the Superintendent of an alleged incident where the Principal may have treated Student B differently based on the gender nonconforming activity of wearing a skirt to School. On or about August XX, 2016, Student E informed the School of an additional allegation, namely that students continued to make derogatory remarks when Students A, B, and E returned to the assembly.

Upon receiving notice of potential harassment on the basis of gender, Title IX requires the District to make a prompt and reliable inquiry into what occurred and, if harassment is found, respond promptly and equitably to eliminate the harassment, prevent its recurrence, and address its effects. The District is required by Title IX and its implementing regulation 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]). The District has adopted the UCP as its grievance procedure to satisfy Title IX's requirement, and the UCP requires that upon receiving notice of

potential harassment, the investigation shall begin within 10 business days. The UCP states that the compliance officer conducting the investigation shall collect all available documents and interview all available witnesses with information pertinent to the complaint, and that a final written decision shall be issued within 60 calendar days.

OCR found that despite multiple written and oral communications from the Complainant beginning June X, 2016, the District did not begin the investigation until on or around August XX, 2016. In addition, OCR identified deficiencies based on the evidence gathered to date, including: a final determination was not provided to the Complainant in accordance with the UCP; and, the documents do not show that the District made a determination as to whether a hostile environment existed for Students A or B or other students or that, if a hostile environment was found to exist, any actions were taken to prevent recurrence of harassment or address its effect. OCR is also concerned that the District received notice of the allegation that Student B may have been subjected to different treatment with respect to application of the School dress code and may not have provided a prompt and equitable process under Title IX.

In order to complete its investigation, OCR would need to interview District and School administrators and several students, including Students A and B. Prior to completing the investigation, the District expressed its interest in voluntarily resolving this complaint, and OCR agreed that it was appropriate to do so.

## **Conclusion**

To address the deficiencies identified during the investigation, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement which is aligned with the complaint allegation and the findings and information obtained by OCR during its investigation. Under the Resolution Agreement, the District will disseminate an anti-harassment and anti-discrimination statement, as well as a guidance memorandum describing the District's Title IX obligations. In addition, the District will train School staff about sex-based harassment and discrimination, including on the bases of sexual stereotyping and gender expression, and the appropriate response to notice of harassment and discrimination. The District will provide information and trainings on sex-based harassment and discrimination to students at the School, and conduct a climate survey for School students and staff. The District will also complete the investigation of the Complainant's June X, 2016 complaint and provide the final determinations of that investigation in accordance with the District's grievance procedure or another procedure, which is compliant with Title IX and its requirements.

Based on the commitments made in the enclosed Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the Resolution Agreement is intended to address all of the allegations in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the Title IX and its implementing regulations at issue in the case.

OCR's determination in this matter 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. The Complainant may have the right to 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 Complainant 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 regarding this letter, please contact Nezhia Burkes ([Nezhia.Burkes@ed.gov](mailto:Nezhia.Burkes@ed.gov)) or Annie Lee ([Annie.Lee@ed.gov](mailto:Annie.Lee@ed.gov)).

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure

cc: Gabriel Sandoval, Counsel (by email only)