



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

May 28, 2019

Sent via USPS

Mr. Warren Galletti
Superintendent
Point Arena Joint Union High School District
PO Box 87
Point Arena, California 95468

(In reply, please refer to case no. 09-17-1338.)

Dear Superintendent Galletti:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Point Arena Joint Union High School District (District). The Complainant alleged that students at XXXXX XXXXX XXXX School were subjected to harassment on the basis of sex, and that the Complainant was subjected to retaliation.¹ Specifically, OCR investigated the following issues:

1. Whether female students in a Teacher's XXXX class were subjected to continued sexual harassment, which created a hostile environment on the basis of sex; and if so, whether the District failed to respond to complaints of sexual harassment by the Teacher in a prompt and effective manner; and
2. Whether the District retaliated against the Complainant for advocating for the female students who experienced sexual harassment when XXX XXX XXXXXXXXXXXX XXXX XXX XXXXXXXXXXXX XXXXX XXX XXXX XX XXXX XX XXX XXXXXXXXXXXXXXXX XXXX XXXXX.

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 regulations 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 District is a recipient of financial assistance from the Department; OCR therefore had jurisdiction to investigate this matter under Title IX.

¹ OCR previously provided the District with the identity of the Complainant. We are withholding the Complainant's identity from this letter to protect her privacy.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. With regards to allegation 1, OCR concluded that the District was not in compliance with Title IX requirements. Regarding allegation 2, OCR dismissed the allegation as the Complainant has filed the same or a similar allegation based on the same operative facts in state court. The facts gathered, legal standards, and the reasons for our determinations are summarized below.

I. Factual Findings

The District receives services from the Mendocino County Youth Project (Project), and has County project workers (Project Workers) who are assigned to specific schools within the District to provide drug and alcohol prevention, sexual health education, emotional and crisis intervention/support services to students. The high school at issue in this case (School) had several Project Workers placed at the School. Project Workers are not considered District employees. Additionally, the District employs counselors (School Counselors) who are also placed at school sites and are considered employees.

On October X, 2016, a Project Worker (Project Worker 1) met with the School principal (Principal) about concerns she had heard from female students including that the Teacher engaged in behavior which they believed was sexually inappropriate including that a student (Student 1) reported that the Teacher made her uncomfortable by the way he looked at her, touched her, and continued to touch her after she asked him to stop; and other students reported that the Teacher would comment on how they smelled nice, and would touch their shoulders and arms in ways that made them uncomfortable. According to Project Worker 1, the Principal informed her that he would review the information and would follow up.

After her meeting with the Principal, Project Worker 1 stated to OCR that between October X and October XX, 2016, she and a fellow Project Worker (Project Worker 2) received reports from nine students regarding inappropriate sexual contact from the Teacher. These reports included the Teacher poking female students' hair if they wore it in a bun; comments about students' hair smelling good; shoulder touching; arm stroking; shoulder massaging; XXXXXXXXXXXX XXX XXXX XXXX XXX XXXXXXXX XX X XXXXXXXXXXXX XXXX while helping with XXXX XXXXXXXXXXXX; indicating to a student (Student 2) who was wearing a XXXXXXXX XXX XXXXX XXX XXXXXXXXXXXXXX that he would like to see more XXXXXXXX; and telling a student (Student 3) when she XXX XXXXX XXXX XXX XX XXX XXXXXXXXXXXX XXXX XX XXXXXXXXXXX XXX XXXXX XXXX XXXX XX XXXXX XXXX XXX XXXXXXXXXXXX XX XXX XXX XXX XX XXX.

On October XX, 2016, Project Worker 1 reported to the Principal an interaction between the Teacher and Student 1 in which the Teacher offered to help Student 1 XXXXX XXX XXXXXXXXXXXXXXXX outfit XX XXXXXXX XXX XX XX XXX XXXXXXXXXXXXXXXXXXXX XXXXX XXX XXXXXXXXXXXXXXXX. In a written report of this incident which was submitted to the District in December of 2016, another student stated that the XXXXXXXXXXXX comments were in regard to make XXX XXXXXXX XXXXXXXXXXX XXXXXXX XXX XXXXXXXXXXX XXXX. On October XX, 2016, Project Worker 1 met with the Superintendent regarding concerns about the

Teacher's unwelcome sexual conduct towards female students. On October XX, 2016, the School Counselor emailed the Principal to ask about steps taken to deal with the allegations of sexual harassment regarding the Teacher. The Principal responded that it was a personnel matter and had been addressed. The School Counselor responded that the allegations were additionally a counseling concern as they were affecting the mental health of 4 students.

A School Counselor told OCR that he began receiving reports from students regarding the Teacher engaging in sexual conduct towards them including unwanted and inappropriate touching. On October XX, 2016, the School Counselor emailed the Superintendent inquiring if he was "in the loop" regarding allegations of sexual harassment involving the Teacher.

Project Worker 1 reported to OCR that the interactions with the Teacher adversely impacted the female students who reported to them about the incidents. She stated that Student 1 felt uncomfortable attending the Teacher's class. She also stated that after the XXXXXXX comment, Student 2 left the Teacher's XXXX class and reported to the Project Worker that she did not want to return to the Teacher's classroom because she felt uncomfortable, that the XXXXXXX comment was not the first incident, and that the Teacher had previously rubbed her shoulder and touched her hair, and had not stopped when she had asked him to. After the comments made to Student 3 XXXXX XXXXXX XXXX Student 3 reported to the Project Worker that she felt so uncomfortable that she went XX XXX XXXXXXXXX, and stayed XX XXX XXXXXXXXX until other students had arrived in the classroom.

On October XX, 2016, the Principal drafted a memo for the Teacher's file. The memo stated that the Principal had met with the Teacher at least three times to discuss reports from students that he had touched them on their shoulder, neck and hair in a way that made them uncomfortable. The Teacher was directed to not touch students, review the District's Administrative Regulation regarding sexual harassment, and confer with the Principal immediately if there are any concerns. On October XX, 2016, Student 1 reported to Youth Worker 1 that the Teacher XXXXXX at her, called her X XXXXXX XXXXX, and gave her a XXXXXXXXXXXX XXXXXXX XXXXXXXXX, and that she continued to feel uncomfortable being in the Teacher's class because she perceived his interest in her as a sexual one. On October XX, 2016, Student 1 came to the Project Workers' office rather than attend XXXX class with the Teacher because she felt uncomfortable with what she perceived as the Teacher's sexual attention towards her. Project Workers 1 and 2 reported Student 1's concerns to the School Counselor, who in turn emailed the concern to the Superintendent.

October XX, 2016, Project Worker 1 and a School Counselor met with the Superintendent regarding sexual conduct by the Teacher toward female students. Following the meeting, the School Counselor emailed Project Worker 2 stating that they believed they will need to create a timeline with specific incidents XX XXXXX XX XXX XXXXXXXXXXXX as the Teacher's unwelcome sexual conduct was continuing. On October XX, 2016, a teacher at the School emailed the Principal summarizing a meeting held on October XX, 2016

involving other teachers, and stating that to date they had received complaints from eight different female students regarding unwelcome sexual conduct by the Teacher, that they expressed their displeasure at the Principal's response to their concerns, and that they were working on having the female students come forward directly to the Principal. On October XX, 2016, the Principal responded that the information was incorrect and that this was a personnel matter.

On November X, 2016, a student (Student 4) reported to Project Worker 1 that she wanted to switch XXXX classes because of the Teacher's unwelcome sexual conduct including that he stroked her hair and told her XXX XXXX XX XX, and that despite her asking him repeatedly to stop, he continued to touch her hair. She stated that the Teacher doesn't engage in the behavior when there are male students in the room. Student 4 also reported that the Teacher attempted to XXXXX XXX XXXXXXXXXXXX of another female student to XXX XXXX XXX XXX XXXXXXXXXXX XXXXXXXXXXXX XXX XXXXXXXXXXXX. This was reported to the Superintendent in a timeline submitted by Project Worker 1. On November X, 2016, a School Counselor emailed the Principal to report that Project Workers continued to receive reports of female students feeling "harassed" and unsafe. He requested to meet with the Principal and stated that he and two other Project Workers had created a timeline with specific incidents for review. The Principal responded the same day that this was a personnel matter and had been addressed. The School Counselor responded that although the behavior may have been previously addressed, it was continuing.

On November X, 2016 the Superintendent emailed Project Workers 1 and 2 requesting the timeline with information that they had discussed at the October XX, 2016 meeting and any other evidence they had available for his investigation. A timeline was emailed to him the same day, and a file folder with reports was left at the Principal's office. On November XX, 2016, a School XXXXXXXXXXX XXXXX emailed the Superintendent with quotes that she had collected from female students XX XXX XXXX. The quotes and information were similar to reports of unwanted touching that had previously been reported. The Superintendent responded that the information was helpful, and that he was conducting an investigation into the incidents. On November XX, 2016, Project Worker 1 emailed the Superintendent to express concern that parents had not been notified that their children were reporting discomfort with the Teacher. She also inquired about the best way to ensure that students who were impacted have their stories heard even if they did not feel comfortable providing a written statement. The Superintendent responded that they had collected many statements and would be involving other agencies as was required as mandated reporters. He stated that he and the Principal would proceed and that it was a personnel matter.

On November XX, 2016, the School had a teacher sit in on the Teacher's XXXX class to observe his behaviors. The observing teacher reported to the head of Human Resources that she did not observe the Teacher engage in any inappropriate or sexually harassing behavior, but that the Teacher was in his own world and that there was a disconnect between him and the students. On November XX, 2016, the Superintendent filed a report as a mandated reporter with the Mendocino County Sheriff's Department regarding the Teacher's behavior. The report stated that the Teacher had given a student (Student 5)

a XXXXXXXX XXXXXXXX XXXX and squeezed her shoulder XXXX XXXXXXXXXXXX XX XX XXX. Student 5 reported that the Teacher XXXXXX XX XXXX XXX XXXX XXXXXXXXXXX XXX XXXXXXXX XXXXX XXXXX XX XXXX XXXX XXX XXX XXX XXXX XXX XXXXXXXX XXX XXXX. Student 5 reported feeling very uncomfortable.

On November XX, 2016, the Teacher was placed on leave for 3 days while the Superintendent concluded his investigation. On November XX, 2016, the Superintendent filed another report as a mandated reporter with the Mendocino County Sheriff's Department regarding the Teacher's behavior. The documents provided to OCR by the District do not include a description of the incident information, however the report was filed on behalf of Student 1.

On November XX, 2016, the Superintendent and School Counselor met with the Teacher to review the Superintendent's expectations. According to documents provided to OCR by the District, the Teacher stated that he would not touch students.

On November XX, 2016, the Teacher returned to the School. His classroom was observed by the Superintendent on November XX and XX, 2016 who did not witness any incidents that could be construed as inappropriate. On November XX, 2016, the Teacher received a letter of reprimand from the Superintendent. X---paragraph edacted---X. The letter did not state whether the Teacher violated the District's policy prohibiting sexual harassment.

On December X, 2016, a teacher at the School emailed the Principal to inform her that she was concerned about a conversation she had with the Teacher. The Superintendent was copied on the email, as were other School and District personnel. According to the teacher's email, XXX XXXXXXXX XXXXXXXXXXXX XXX XXX XXXXXXXXXXX XXXXX XXX XXXX XXXXXXXXXXXX XXX XXXXXXXX XXXXX XXX XXXXX XXXXXXXX XX XXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXXXX XX XXXXXXXXXXXX XX XXXXXXXX XXXXX XXXXX XXX XXXXXXXX XXXXXXXXXXXX XX XXXXXXXX XXXXX XXXXXXXXXXX XXXXXXXX. The teacher stated to OCR that following her report one member of the School Board thanked her for the information. XXX XXXXXXX XXXX XXX XXXXXXXXXXX XXXX XX XXX XXXXXXX XXX XXXX XXX XXXX XXX XXX XXXXXXXXXXX XXXX XXX XXX XXXXXXXXXXX XXX XXXX XXXXXXXX XX XXX XXXXX. The teacher stated to OCR that there was uneasiness on campus from students who felt that they had been sexually harassed by the Teacher and from students who were supporting their friends.

On December X, 2016, a teacher again observed the Teacher's classroom for signs of inappropriate conduct. Written notes do not indicate that they observed any inappropriate behavior, but again indicated a concern with his teaching ability.

On December X, 2016, a School Counselor emailed the Superintendent and Principal with a list of concerns that occurred after November XX, 2016. Two of the concerns included incidents unrelated to harassment or touching. One incident involved the Teacher XXXXXX XXXXXXXXXXX a student XX XXX XXXXX XXX XXXX XXXXXXX X XXXXXXX XX XXX XXXXXXXXXXX XXXXXXXXXXX XXX XXXXXXX. The other concern included a

concern previously brought to the Superintendent and Principal's attention regarding the Teacher inquiring about XXXXXXX XXXXX on two students. On December X, 2016, the Superintendent emailed the Board of Trustees that he had a meeting with the Teacher where the Teacher stated that he may resign XXXXXX XXX XXXXXX XXXXX. The Superintendent also stated that should the teacher not resign they would move forward with a recommendation for "non-reelect" XX XXXXX. The Superintendent stated that XXXXXXX XXXX XXXXXXXXXXX XX XXXXXXXXXXX XX XXXX XXXXXXXXXXX XX XXXXXX XXXXXXX XXXX XX XXX XXXXX XXXXXXXXXXXXX A Trustee member responded that his ability to teach was also a concern, and that many students had dropped his XXXX class, which hurts their ability to meet the admission requirements for the University of California (UC) system.

On December X, 2016, Student 1 and another student (Student 6), along with Student 6's mother, met in person with the Project Worker 1 and a School academic counselor to report that they were continuing to feel uncomfortable around the Teacher. Student 1 reported the prior conduct by the Teacher (that he massaged her shoulders, touched her hair, XXX XXX XXXX XXXX XXX XXXX XXX XX XXX XXXXXXX XXXXXXXX XX XXXXX XXX XXXXXXXXXXXXXXX XXXXXXX, XXXXXXX XXX XX XXX XXXXXXXXXXXXXXX XXXXX XXX XXXXXXX XXX X XXXXXXXXXXXXXXX XXXXXXX). According to Project Worker 1, Student 1 stated that she felt like the School and District did not take her seriously. She also stated that she had repeatedly requested to be removed from the Teacher's class, and had asked to take XXX XXXXXXX XXXX class, but had been denied the opportunity to do so.

Also on December X, 2016, a student (Student 7) reported to Project Worker 1 that on that day the teacher X---paragraph redacted ---X. Project Worker 1 reported this concern in writing to the Superintendent.

On December XX, 2016 the Superintendent met with a small group of parents about their concerns regarding the Teacher. On December XX, 2016, the Superintendent sent the parents whom he met with an email stating that they were posting an advertisement for XXXX tutors and would be offering an XXXXXX XXXX course to all students for extra support in the class. On December XX, 2016, the Superintendent again met with the Teacher to review expectations, including that he should not be alone with students and should not touch them.

School closed early on December XX, 2016 due to storms in the area and did not reopen until January X, 2017 when winter recess ended. On January X, 2017, a teacher at the School (reporting teacher) emailed the Superintendent to report that XXX XXXXXXXX XXX, January X, 2017, the Teacher had Student 1 XXXXX XX XXX XXXXXXXXXXX XXX XXXXX XXXXXXX XXX XXXX XXX XXXX XX XXXXXXX XXXXXXXX XXXXXXX XXXXXXX XXX. According to the teacher's account of the incident, Student 1 informed the reporting teacher that she was uncomfortable XXX XXXXXXX XX XXXXXXX XXX XXX XXXXXXX XXXX XXX XXX XXXXXXX XXX XXXXXXX XXXXXXX XX XXX XXXXXXX XXXXXXXX XX XXX. The reporting teacher stated that she believed that if she told the Principal nothing would be done. The reporting teacher also stated that she encouraged Student 1's guardian to

meet with the Superintendent. The reporting teacher stated to OCR that she also reported to the Superintendent that the Teacher would routinely touch female students' hair during class, the Teacher touched a student on her XXXXX XXXX XXXXXXXX XXX XXXXXXX XXX XXXXXXXX, and the Teacher told a student XX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXX XXX. The Superintendent replied to the teacher requesting a short report regarding the incident involving Student 1. The Student's guardian reported the same incident to the Superintendent. The guardian stated that the Teacher XXX XXXX XXXX XX XXXXXXXXXX XXXXXXXX XXXXXXXX XXXXXXX XXXXXXXXXX XXX XXX XXXXXXXX XXX XXXX XXXX XXX XXXXXXXX XXXXX XX XXXXX.

On January X, 2017 the Teacher received a letter of reprimand from the Superintendent. The letter stated that the Teacher had received three prior administrative directives on October XX, 2016, November XX, 2016 and December X, 2016. The letter summarized XXX XXXXXXXX XX XXXX XXXXXXXXXX XX XXXXX XXX XXXXXXXX XXXXXXXXXXXX X XXXXXXXX XXXXX XX X XXXXXXXXXX XXX XXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX XX XXX. The letter concluded that the Teacher has exhibited a "persistent and pervasive pattern of interactions with female students." The letter was placed in the Teacher's personnel file. School was closed from January X to January XX, 2017 due to heavy storms in the area. In a January X, 2017 email to other parents and a member of the School Board, a parent wrote that she had heard from the Superintendent in a previous meeting that the XXXXXXX XXXX program would be offered to students who did not want to be in the Teacher's XXXX class. The parent's child had reported to her that she had never been given this option, and if she had, she would have enrolled.

On January XX, 2017, the reporting teacher emailed Project Worker 1 and a School Counselor stating that after the meeting regarding the January X, 2017 incident, the Superintendent told Student 1 to keep the information regarding the Teacher confidential, and informed her that he was struggling to fire the Teacher because it wouldn't be fair to the students who did not have direct issues with him. The teacher who reported the January X, 2017 incident with Student 1 requested that the Project Worker 1 and the School Counselor check-in with Student 1 to see how she was doing after the meeting. Project Worker 1 responded that she has backed off since she felt that she had reported numerous times only to be "intimidated, disrespected and ignored" by the Superintendent. She stated that she was concerned XXXXX XXX XXXXXXXXXXXXXXXXXXXX XXX XXX XXXXXXXXXXXX XXX XXXXX XX XXXXXXXX XX XXXXXXXXXXXX XXXXXXX XXX XXX XXXXXXXXXXXX XXXXXXXX. She also stated that she looked into XXXXXXXXXXX XXX XXXXXXXX XX X XXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX but stopped since others were unwilling to join her for fear of retaliation.

The reporting teacher stated to OCR that after she reported the behaviors to the Superintendent she still had students who informed her they felt uncomfortable continuing in the Teacher's class and who were requesting to switch XXXX classes or drop their XXXX class because they felt uncomfortable in his room. The Teacher taught XXXXX XXXXXXXXXXX XXXX classes; students who want to attend a UC school are required to take XXXXX XXXXXXXXXXX XXXX classes. There was no other XXXX XXXXXXXX XX XXXXXXXX XXX XXXXX XXXXXXXXXXX XXXX class. According to the reporting teacher, students were

concerned that they would have to continue in the Teacher's XXXX class in order to remain eligible to apply to a UC.

A School Board meeting was held on January XX, 2017. During the meeting several parents expressed extreme anger over the situation with the Teacher and the fact that he was still employed by the District. On January XX, 2017, the Teacher submitted his resignation letter to the Superintendent. While the Teacher stated that his resignation was effective February XX, 2017, the Teacher did not return to the classroom. On January XX, 2017, the Superintendent informed parents and guardians via letter that the Teacher had resigned, and that they had advertised his position. The Superintendent also stated that the School was registering students for XX XXXXXX XXXX course option.

II. Analysis and Conclusions of Law

Allegations 1 and 2: Whether female students in the Teacher's XXXX class were subjected to continued sexual harassment, which created a hostile environment on the basis of sex; and if so, whether the District failed to respond to complaints of sexual harassment by the Teacher in a prompt and effective manner.

Legal Standards

The regulations implementing Title IX, at 34 C.F.R. §106.31, states as follows: "Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

Sexual harassment is a form of sex discrimination prohibited by Title IX. Hostile environment sexual harassment is unwelcome conduct of a sexual nature that is sufficiently serious (i.e., sufficiently severe, persistent, or pervasive) that it denies or limits a student's ability to participate in or receive the benefits, services, or opportunities of a school's program. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

In determining whether sexual harassment has created a hostile environment based on sex, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective. A sexually hostile environment may deny or limit a student's ability to receive the benefits, services, or opportunities of a school's program even if there are no tangible effects, e.g., a drop in the student's grades. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the

harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. Moreover, a series of incidents at the school, not involving the same individuals, could—taken together—create a hostile environment, even if each by itself would not be sufficient.

Under Title IX, a school has a responsibility to respond promptly and effectively to sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

In cases where an employee is engaged in sexual harassment of a student, a school may be held responsible under Title IX regardless of whether it knew or should have known about the harassment. Specifically, if an employee, in the context of carrying out his or her day-to-day job responsibilities for providing aid, benefits or services to students, engages in harassment that denies or limits a student's ability to participate in or benefit from the school's program, the school is responsible for discrimination, whether or not it knew or should have known about it. The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the harassment occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not. The school is therefore also responsible for remedying any effects of the harassment on the students, as well as for ending the harassment and preventing its recurrence. As noted above, this is true whether or not the recipient has "notice" of the harassment.

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

Once charged with notice of a sexually hostile environment, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

Analysis

In this case, the preponderance of the evidence demonstrates that the Teacher engaged in conduct with multiple female students that was unwelcome, of a sexual nature, persistent, and that created a hostile environment for students in his XXXX class. For example, starting in October 2016 students reported to Project Workers, who then reported to the Principal, that the Teacher was touching them in ways that were sexual and made them uncomfortable. Some examples of this included reports of the Teacher touching students' hair, neck and shoulders. A student reported that the Teacher massaged her shoulders, touched her hair, XXX XXX XXXX XXXX XXX XXXX XXX XX XXX XXXXX. Another student reported that the Teacher asked to XXX XXX XXXXXX XXX XX XXXXXXXXXXXX XXXX XXX XXXXX XXX XXXXXXXXXXXX. Students specifically reported that the touching was unwanted, and, in several instances, students requested that the touching stop, and the Teacher did not stop the behavior. A student reported that the Teacher made comments regarding XXX XXXXXXXX that she considered inappropriate and unwanted. Documents provided to OCR show that the incidents of touching continued from at least October 2016 through early January 2017, persisted after students and District personnel asked the Teacher to stop, and created an environment where several female students communicated to either Project Workers, Counselors, the Principal, and the Superintendent that they felt increasingly uncomfortable. In reviewing the conduct, OCR also noted the position of power of the Teacher, XXX XXX XXX XXXX XXXX XXXXXXXX XXX XXXXXXX X XXXXXXX that was required for eligibility to apply to the University of California post-secondary system. All of the reported conduct occurred during school hours and on school grounds. Additionally, students repeatedly reported feeling uncomfortable in the Teacher's XXXX class, requested to be removed from the XXXX class, and were spending time in the Project Workers' office rather than attend XXXX class.

OCR determined that the Teacher was acting in the scope of his employment and engaged in sexually harassing conduct that created a hostile environment that was sufficient to deny or limit students' ability to participate in or benefit from the program. Therefore, OCR concluded that the District is responsible for the Teacher's discriminatory conduct during the time he engaged in such behaviors, and that the District violated Title IX and its implementing regulations.

OCR also examined whether the District responded effectively to notice of the harassment. The District first received information about alleged unwelcome sexual conduct by the Teacher in October of 2016. In response to the initial notice in October 2016, the Principal met with the Teacher three times to discuss his behaviors towards Students, and a memorandum was placed in the Teacher's file regarding the behavior.

However, the Principal's actions were not effective in preventing a recurrence of the Teacher's behavior and from October XX, 2016 to November XX, 2016 the Superintendent and Principal continued to receive reports of unwelcome sexual conduct by the Teacher from School Counselors, Youth Workers, other School teachers, and a XXXXX. In response to the reports, the District did not provide a notice of outcome of the investigation into the complaints and instead stated that it was a personnel matter and that they were looking into the incidents.

In response to the continued complaints regarding the Teacher, the District took the following additional steps: at least three times a teacher or the Superintendent sat-in on the Teacher's class; the Superintendent reported the Teacher to the Sheriff's Office; and the Superintendent placed the Teacher on paid leave while he concluded his investigation. The Superintendent again met with the Teacher on November XX, 2016, and placed a letter of reprimand in the Teacher's file.

During this time, students reported still feeling uncomfortable on campus and continued to report ongoing unwelcome sexual conduct by the Teacher. For example, on December X, 2016, two students again reported inappropriate conduct, stated that they did not believe that the District was taking their concerns seriously; one of the students stated that she was so uncomfortable she has asked XX XXXX XX XXXXXX XXXX class, but was denied the opportunity to do so. The Superintendent again met with the Teacher to reviewed expectations on December XX, 2016. Another incident was reported on January X, 2017; XXX XXXXXX XXX XXXXX XXXX X XXXXXX XX XXX XXXXX XXXX XXX XXX XXXXX XXX XXXXXX XXX XXXXXX XXXX XX XXXXX XXX XXXXXX XXXXXX XXXXXX XXX. The Teacher received a letter of reprimand in his file. Internal emails circulated by teachers indicated that they had "backed off" pressing the Superintendent and Principal with more reports and requests for action since they felt they had been ignored, disrespected and intimidated.

OCR determined that while the District took action when they received reports of touching by the Teacher, they did not take timely, appropriate and effective steps to eliminate the hostile environment and its effects. The District received continued reports of inappropriate touching by the Teacher, and, while the Superintendent and Principal met with the Teacher and conducted an investigation, they did not take steps to ensure that students in the Teacher's class felt safe and not subjected to recurring incidents, did not provide options for students who continued to experience unwelcome sexual conduct from the Teacher, and did not communicate a notice of outcome of the investigation to individuals (students, parents, and staff) who complained about the Teacher's conduct. Documents indicate that several students wished to switch out of the Teacher's class but could not, XXXXX XX XXX XXX XXXX XXXXX XXXXX XXXX XXXXX XXXX XXXX XXXX

XXXXXXXX XXX XXXXXXXXXXXX XX XXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXX.
While there is evidence that the Superintendent told some parents that their child could enroll in XX XXXXXX XXXX class, there is also evidence that not all students were provided this option. Interviews with School staff indicated that the hostile environment remained on campus, and that School staff who wanted to provide support to students were told to not be involved and to “downplay” the issue. Accordingly, OCR determined that the District failed to respond to complaints of sexual harassment in a prompt and equitable manner when they did not eliminate the hostile environment, redress its effects, and prevent its recurrence.

Allegation 2: Whether the District retaliated against the Complainant for advocating for the female students who experienced sexual harassment when she was XXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXXXX XXX XXXX XX XXXX XX XXX XXXXXXXXXXXXXXXX XXXX XXXXX.

Legal Standards

The Title IX regulations, at 34 C.F.R. §106.71, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibits school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school district can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Analysis

Pursuant to OCR’s Case Processing Manual (CPM), Section 108(i), OCR will dismiss an allegation when the same or a similar allegation based on the same operative facts has been filed by either the complainant or someone other than the complainant against the same recipient with state or federal court. In addition, OCR will dismiss allegations raised with OCR that could have been raised in the proceeding currently pending before state or federal court. On January X, 2018, the Complainant filed a civil suit against the Board of Trustees of Point Arena Schools District in the XXXXXXXX Court of California, XXXXXX XX XXXXXXXXXXXX XXX XXXX XXXXXXXX requesting damages and injunctive relief. OCR reviewed the allegations and facts contained in the complaint, and determined that they are based on the same operative facts regarding retaliation against the Complainant. As of the date of this letter, the case was still pending in XXXXXXXX Court. Accordingly, because the matters filed with the court involve the same set of operative facts and similar allegations, OCR is dismissing the allegation as of the date of this letter. An OCR complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.

III. Conclusion

Based on the commitments made in the enclosed Resolution Agreement (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 Agreement is intended to address the complaint allegations and OCR's findings. OCR will monitor the implementation of the Agreement until the District is in compliance with its terms. Upon completion of the obligations under the Agreement, OCR will close the case.

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 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, 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Dana Isaac Quinn, Civil Rights Attorney, at (415) 486-XXXX or dana.isaacquinn@ed.gov.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure: Resolution Agreement
cc: Nancy Klein, Counsel for the District