



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 29, 2019

VIA ELECTRONIC MAIL

Dr. Nellie Meyer
Superintendent
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, California 94519

(In reply, please refer to case no. 09-19-1031.)

Dear Dr. Meyer:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Mt. Diablo Unified School District (the District). OCR investigated whether the District discriminated against the Student on the basis of her sex.¹ Specifically, OCR investigated whether the Student was subjected to harassment on the basis of her sex as a result of comments made to her by other students during the 2017-18 school year and whether the District failed to respond in a prompt and equitable manner to the harassment.

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 Department. The District is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. Based on the facts gathered to date, OCR was concerned that the District did not conduct a prompt or adequate inquiry to reliably determine what occurred with respect to the allegations of peer harassment against the Student on the basis of sex. Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

Legal Standard

¹ OCR previously provided the District with the identity of the Complainant and Student. Their names are not included in this letter for privacy reasons.

The regulations implementing Title IX, at 34 C.F.R. §106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. School districts are responsible under Title IX and the regulation for providing students with a nondiscriminatory educational environment. Sexual harassment, including gender-based harassment predicated on sex-stereotyping, 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. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity or femininity.

Under Title IX and the regulations, once a school district has notice of possible sexual or 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 if it fails to respond adequately. A school 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, adequate, and impartial 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, prevent the recurrence of harassment, and remedy the effects of the harassment on the student who was harassed. 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 any 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.

Facts Gathered to Date

The following facts are relevant to OCR's analysis:

The Student was a XXXXX grade student in 2017-18 at a high school (the School) in the District. The Student received special education services under the category of "other health impairment" pursuant to an Individualized Education Program (IEP).

On March XX, 2018, the Complainant (the Student's parent) emailed School staff to say that the Student would be returning to School after the "days she missed due to the harassment and false police reports called in [by] campus bullies." The Complainant requested that the Student be allowed to stay with a specific teacher to do the work that she missed. The School's Assistant Principal responded to say that it would not be appropriate for the Student to stay with that teacher.

The Complainant responded the following day to say that the Student was "afraid to come to [the School] due to the administrations lack of control of students and constant student drama." The Complainant noted that "the bullying is preventing her from coming to school." The Complainant included a description of several ways in which she alleged the Student was bullied by other students. Those incidents included X---paragraph redacted---X.

The School's Principal responded by email to say that he was concerned about the tone, accuracy and defamatory nature of what was written. He also noted that when he had spoken to the Complainant that morning the Complainant had been adversarial.

The Student stopped attending school shortly thereafter, and did not return for the remainder of the 2017-18 school year. On April X, 2018, the Student's XXXXXXXXXXXXX sent a letter stating that "due to recent negative experiences at school, [the Student] has had an exacerbation of her XXXXXXXXXXXX XXXXXXXX and has been unable to return to school...I recommend home/hospital instruction for [the Student] until appropriate placement is determined."

An IEP meeting was conducted on April XX, 2018. At that IEP meeting, the Complainant stated that she wanted a safety plan for the Student because she was not feeling safe on campus. She stated that the Student was suffering from XXXXXXXX XXXXXXXX, XXXXXXXXXXXX XXXXXXXXXXXX, and XXXXXXXX. The Complainant stated that the Student was isolated from school and family due to bullying and rumors. The Complainant also stated that there were rumors that the Student XXX X XXXX XXX X XXXXXXXX. On April XX, 2018, the Student XXXXXXXX XX XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXX, which lasted approximately two months.

On May XX, 2018, the Complainant submitted a complaint letter that went to the District's Assistant Superintendent. That complaint noted that "making sexual innuendos, calling people sexually charged names, [and] spreading rumors about sexual activity violate[d] her Title IX rights." The complaint stated that the Vice Principal had "failed to utilize appropriate protocols to deal with the bullying suffered by [the Student] on campus XX XXXXX XXXXXXXX XXXXXXXX despite previous complaints." The complaint referenced a number of incidents, including that the Student was called XXXXXXXX XXXXXXXX XXXXX XX XXXXXXXX XXXXXXXX XX XXX XXXXXXXX and that she was "subjected to gender discrimination and taunting XX XXXXXXXX XXXXXXXX on campus along with being called sexually charged names for not conforming to gender stereotypes and being 'girly' enough."

On July X, 2018, the Complainant sent an email to the Student's IEP team requesting changes to her IEP, including an assistant, which she said would help protect the Student from harassment.

On July XX, 2018, the Complainant forwarded a copy of the May XX, 2018 complaint to the District's superintendent, an administrator of the home and hospital program, an employee of the county, and a special education teacher at the School. On July XX, 2018, the Complainant also forwarded the complaint to XXXXXXXX XXXXXXXX XXXXXX XXXXXXXX. Finally, on July XX, 2018 and again on August XX, 2018, she forwarded the complaint to the new Assistant Superintendent, because the previous Assistant Superintendent had left the district.

On August XX, 2018, the new Assistant Superintendent met with the Complainant after an IEP meeting. The Assistant Superintendent's notes from that meeting stated that the Complainant had said the Student had been out of school "because of bullying." The notes also indicate that the Complainant stated that the Student had been "bullied XX XXXXXXXX XXXXXXXX XX XXXXXX XXXXXX. XXXXXXXX XXXXXXXX XX XX calling [the Student] XXXXXX/XXXX/XXXXXXXX. XXX XXXXXXXX XXX XXXX. Calling her XXXXXXXX XXXXXXXX."

The Assistant Superintendent told OCR that the purpose of his meeting with the Complainant was not to investigate a complaint but was rather that he was just gathering information regarding the Student's situation.

The Student eventually returned to school on October X, 2018. The Complainant filed this complaint with OCR on October XX, 2018, and a copy of the complaint was also sent to the District's Executive Director of Instructional Support. The complaint included additional detail about the bullying that had occurred. Specifically, the Complainant stated that the Student had been called XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX teased for XXXX XXXXXXXX. It also stated that she had been XXXXXXXXXXXX XXXXXXXXXXXX and threatened and had devastating rumors spread all around campus XXXX XXX XXX XXXXXXXXXXXX XXXXXXXX XXX XXXX XXX XXX XXXXXXXXXXXX XXXXXXXXXXXX XX X XXXXXXXX XXXXXXXX.

After this complaint was filed with OCR, the District's Assistant Superintendent informed OCR that the District was investigating and planning to provide a response to the Complainant. On November XX, 2018, the District issued a response to the Complainant to her May XX, 2018 complaint. The District's findings as to the relevant allegations were as follows:

Allegation #2: The Bullying [the Student] was subjected to was very intense during XX XXX XX XXX XXXXXXXX XXXXXX XXX XX XXXXXXXXXXXXXXXX XXX XXXX XXXX XXXXXX looking for a target.

Finding #2: There is no evidence to support this allegation. I was unable to identify witnesses to the alleged incidents of bullying and [the Student] did not mention to peers, teachers or administrators that she had been bullied or otherwise bothered during XX XX XX XXX XXXXXXXX XXXX.

Allegation #3: Bullying of [the Student] included verbal and physical conduct including called sexually charged names XXXXXX XX XXX XXXXXXXXXXXX XXXXXXXX XXXXXX by XXXXXXXX XXXXXX student well known by NHS administration.

Finding #3: There is no evidence to support this allegation. None of the witnesses you mentioned in your complaint reported having seen any of the behavior about which you complained.

The Assistant Superintendent told OCR that, with respect to the allegations of peer harassment, he interviewed the Student's counselor and the Vice Principal in November 2018. He also interviewed three other witnesses with respect to separate incidents that were not investigated by OCR. The Assistant Superintendent was not able to provide OCR with any notes from these interviews. The Assistant Superintendent said that the counselor told him that the Student never came to her for help regarding bullying. The Assistant Superintendent told OCR that the Vice Principal said that he had asked the Student if someone was bothering her and she said she was fine.

The Assistant Superintendent told OCR that he did not speak to the Student because he did not think she would provide any additional information beyond what the Complainant had provided. He also stated that he got the feeling that the Complainant did not want anyone to speak to the Student. He said that he did not want to upset the Student by speaking to her about these issues because he already knew what the Complainant had told him.

Analysis and Resolution

Under Title IX and its implementing regulations, once a school district has notice of possible sexual or gender-based harassment between students, it is responsible for determining what occurred and responding appropriately. A school district must conduct a prompt, adequate, and impartial inquiry designed to reliably determine what occurred.

Here, OCR was concerned that the District did not conduct a prompt or adequate inquiry. Specifically, OCR was concerned that the Complainant had notified various school and district staff of potential harassment by peers on the basis of sex from March 2018 through October 2018. The District issued a response on November XX, 2018. However, the facts gathered to date indicate that, with respect to the issue of peer harassment, the investigation consisted only of speaking to the Vice Principal and the Counselor, who both said that they were not aware of any bullying.

OCR was concerned that the District had not reliably determined what had occurred because, in order to do that, the District would have needed to know, at minimum, which students were accused of the bullying and whether there were other witnesses. The person who would presumably best know the answers to these questions was the Student. OCR was concerned that without actually asking the Complainant for permission to speak to the Student, the District could not actually conduct an adequate inquiry to reliably determine what occurred.

In order for OCR to complete its investigation and make a finding as to whether or not the District was in compliance with Title IX, OCR would need to determine what information other School staff may have gathered about the Complainant's allegations of bullying, and assess any response. However, prior to the conclusion of the investigation, the District articulated an interest in resolving the matter prior to the conclusion of the investigation under Section 302 of

OCR's Case Processing Manual, and OCR determined that it was appropriate to do so, as described below.

Overall Conclusion

This concludes the investigation of this complaint.

To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the information obtained by OCR during its investigation. The resolution agreement provides that the District will conduct a new investigation into the allegations of peer harassment based on sex made by the Complainant, and that the District will provide training for all District staff responsible for responding to allegations of discrimination and harassment under Title IX.

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 the complaint allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close 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, 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, 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 Blake Thompson, Civil Rights Attorney, at (415) 486-XXXX or at blake.thompson@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

Cc: Deborah Cooksey, General Counsel