



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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October 18, 2016

Mr. Doug Ardiana  
Superintendent  
Bandon School District 54  
455 9<sup>th</sup> Street SW  
Bandon, Oregon 97411-9013

Re: Bandon School District 54  
OCR Reference No. 10161006

Dear Superintendent Ardiana:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against the Bandon School District 54 (the district). The complaint alleged that a female student (student or Student A) was discriminated against on the basis of sex at the district's XXXXXXXX (school). Specifically, the complaint alleged that:

1. the student was sexually harassed by another student during the 2015-2016 school year; and
2. the district failed to take prompt and effective responsive measures to address the harassment.

OCR investigated the complaint under its authority to enforce title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in programs and activities receiving federal financial assistance from the Department. The district receives federal financial assistance from this Department.

OCR has determined that the findings in the investigation support a conclusion that the district failed to comply with Title IX. OCR also acknowledges the district superintendent's recognition of the need to review and revise its grievance procedures relating to the handling of potential complaints of sex discrimination and its notice of non-discrimination, along with the appropriate designation of a Title IX coordinator, and his request to enter into an agreement to address those issues. Our findings of fact and conclusions of law, set forth below, are based on a review and analysis of written information provided by the student's parents and the district and interviews with Student A's mother and school administrators and staff.

Findings of Fact-Sexual Harassment of Student A

1. During the 2013-2014 school year, Students A, who is female, and B, who is male, were both enrolled in the XXXX grade at the school and rode the same school bus to and from school.
2. According to records provided to OCR by the district,<sup>1</sup> on December 18, 2013, Student B was observed XXXXXXXX on the school playground and was alleged by three students to have asked Student A XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. It was also reported to the school that Student B said to Student A XXXXXXXXXXXXXXXXXXXXXXXX.
3. The district did not provide OCR with any documentation of an investigation regarding the 2013 incidents. District records reflect that Student B was suspended on December 19, 2013, pending an investigation of these incidents. According to the district, Student B withdrew from school following the December 19, 2013, incident and did not return to school during the 2013-2014 school year. Also, Student B did not attend the school at all during the 2014-2015 school year.
4. The district was unable to provide OCR with any record indicating that it completed an investigation of the allegations after Student B dis-enrolled and it appears that the district did not make a determination with regard to the allegations. The district did not provide any interim relief or services to Student A following the report of the December 2013 incidents.
5. Student B re-enrolled in the district for the 2015-2016 school year and began attending the school on September 8, 2015, in the same grade as Student A. At the time Student B re-enrolled, the district did not re-initiate an investigation into the December 2013 events, take any action in response to his previously reported harassing conduct, or implement any interim or permanent steps to ensure that Student B would not continue harassing Student A after he was re-enrolled.
6. According to Student A's mother, Student A was sexually harassed by Student B during the second week of school, beginning on approximately September 14, 2015. The mother's position is that Student B poked Student A in the back and made a sexually inappropriate comment to her on September 14 and that Student A responded by telling Student B not to touch her. She stated that Student A told her that Student B rubbed Student A's shoulders the very next day.
7. Student A's mother reported to OCR that Student A did not tell her about the first incident but that after the second incident, Student A texted her to come and pick her up from school. Student A's mother told OCR that she reported this incident to the principal when she picked Student A up from school. She also told OCR that she advised Student A to ignore Student B and to stay away from him.
8. Students at the school are assigned by groups to core classes that include math, English, social studies and science. Student A was in these same four classes with a group of approximately 25-

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<sup>1</sup> Neither the superintendent nor the school principal was employed by the district in December of 2013. They were unable to provide first-hand information to OCR regarding the events that occurred during that school year.

30 other students, including Student B. Another group of students of approximately the same size all had their core courses together. Students from both groups also had elective classes that were not with the same group of students that were in their core classes.

9. According to Student A's mother, during the first few weeks of the school year, Student A seemed anxious and upset and she was not sleeping well. She stated that it was because she had been placed in the same core classes with Student B.
10. Student A's parents' told OCR that when they met with the superintendent on September 15, 2015, they asked to have Student B removed from Student A's core classes and that, although the superintendent initially agreed to their request, Student B remained in Student A's core classes after September 15, 2015.
11. The parents indicated to OCR that the school wanted to have Student A participate in a mediation with Student B with a school counselor present, but that Student A did not want to participate in mediation and that she did not want to be in the same room with Student B. Student A's mother told OCR that the school kept trying to talk Student A into mediation and that Student A at some point called her father and told him that they were pushing her to meet with Student B.
12. The district superintendent confirmed that Student A's father requested that Student B be removed from Student A's classes during a meeting on September 15, 2015. The superintendent told OCR that he intended to move Student B out of Student A's class, however, Student B's father objected. According to the superintendent, Student B's father objected, in part, because he felt that the district's suggestion to move Student B from Student A's classes was "fallout" from the December 2013 incidents. The superintendent then offered to Student A's parents to move Student A to different classes, who also did not agree to that option.
13. According to the district's written information, the principal also offered to change Student A's schedule but her mother declined because she believed that Student B's schedule should be changed, not Student A's. The principal's position is that she could not justify changing Student B's schedule based on the information that she had about the incident.
14. The superintendent stated that he planned instead to have the students' social studies teacher monitor the contact between the two students to see that there was no other harassment and an e-mail was sent to the students' social studies teacher on September 16, 2015, instructing him to not have the students sit near each other in the classroom. His position is that because the conduct that was reported had occurred only in this class and because Student B's conduct was not a "blatant" act of harassment, it did not warrant moving Student B out of Student A's classes.
15. The superintendent told OCR that Student A's parents spoke to him on the date of the incident, but did not file a formal complaint. He stated that he did not think that Student A's parents gave the district enough time to remediate the problem before Student A's parents withdrew her from the school.

16. According to written information provided by the district to OCR, Student A's mother and Student A met with the principal at the school on September 16, 2016, and the principal offered to have the two students meet with the counselor to discuss physical boundaries. She also offered to have the police present as well so that both students would hear the severity of what could happen when proper boundaries are not kept and as an extra layer of support for Student A. The principal's position is that Student A's mother agreed to this type of conversation. However, the next day Student A's father told the principal that he did not want a mediated session to take place because he felt it would be too emotionally disruptive for Student A.
17. According to the district's report, the school counselor and the principal met with Student B on September 17, 2015, to discuss appropriate boundaries with girls, especially Student A.
18. Student A's mother told OCR that, between September 15 and 29, 2015, Student A continued to appear anxious, that they had to fight with her to get her to go to school and that on Monday, September 28, she had a panic attack about attending school. She told OCR that she took Student A to the doctor, where she was XX.
19. The parents withdrew their daughter from the school on September 29, 2015. According to Student A's mother, they withdrew her because the situation with Student B had not been resolved.

District's Grievance Procedures, Notice of Non-Discrimination, and Title IX Coordinator

20. The district has policies and grievance procedures regarding harassment of students, including sexual harassment, which were adopted in January of 1995. The policy (Harassment of Student, JBA 1995) indicates that sexual harassment will not be tolerated by the district and includes a definition of sexual harassment.
21. The district's grievance procedures relating to harassment indicate that students who believe they have been subjected to harassment should immediately report an incident to the school principal. The grievance procedures call for a conference to be conducted with the complainant within 5 school days and a written response within 10 school days. The grievance procedures also provide for an appeal process to the district's superintendent and subsequently to the school board. Each of the appeal processes require a meeting with all parties involved in the incident and a written response within 10 school days. The grievance procedures are not specific with regard to the school officials who are responsible for notifying the parties of the outcome.
22. The grievance procedures do not include any information relating to the opportunity for the parties to present witnesses and other evidence or any assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.
23. The district did not provide OCR with evidence that it has a written policy or procedure that protects individuals from retaliation who report or participate in complaint proceedings involving sexual harassment, provides interim measures to protect students in the educational setting while

the district investigates and resolves a report of sexual harassment, or applies an evidentiary standard of preponderance of the evidence when resolving such complaints.

23. The information provided to OCR by the district did not include any evidence that the district had a notice of non-discrimination. The only information obtained by OCR during its investigation regarding the district's notice of non-discrimination is a reference on its website, under a link entitled "Procedural Safeguards Notice," to a State of Oregon Department of Education document entitled "Procedural Safeguards Notice, Parent Rights for Special Education K-21." That link contains the following notification: It is the policy of the State Board of Education and a priority of the Oregon Department of Education that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, religion, national origin, age or disability in any education programs, activities, or employment." That notice refers individuals to the State Superintendent of Public Instruction<sup>2</sup> at the Oregon Department of Education.
24. The only other notification relating to non-discrimination obtained by OCR during its investigation is contained in the district's high school student handbook. That notification is limited to Section 504 and indicates only that the district "does not discriminate on the basis of disability in admission to, access to, or operations of programs, services or activities."
25. The district did not provide information to OCR indicating that it has a designated Title IX coordinator, adequately trained to investigate and resolve potential complaints of sex discrimination including sexual harassment. There is also no evidence that it has notified its students and employees of the name, office address and telephone number of the district's Title IX coordinator.
26. The superintendent told OCR that he recognized that the district's Title IX grievance procedures were out of date and that they required review and revision. He indicated that he has been with the district only a short time, less than 6 months, and that he was in the process of reviewing and updating many of the district's policies and procedures.
27. The superintendent also indicated that he is nominally the district's Title IX coordinator and that he would welcome feedback from OCR regarding the need to ensure that that he can obtain adequate training on what constitutes sexual harassment and on understanding how the district's grievance procedures operate.

#### Analysis and Conclusion-Sexual Harassment and the District's Response

The issue OCR investigated was whether the district discriminated against Student A on the basis of sex by subjecting her to a hostile environment by failing to take prompt and effective action to address harassment based on sex after being notified that Student A was being subjected to such harassment in September 2015.

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<sup>2</sup> The Office of the Superintendent of Public Instruction, an elected position, was eliminated by state law effective in 2012. The law made the governor the superintendent, with the responsibility of appointing a Deputy Superintendent of Public Instruction.

The Title IX regulation at 34 C.F.R. §106.31(a) provides that 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, or other education program or activity operated by a recipient of Federal financial assistance. OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, dated January 19, 2001, published at 66 Federal Register 5512 (hereinafter, “2001 OCR Revised Sexual Harassment Guidance”), emphasizes that sexual harassment is a form of sex discrimination prohibited by Title IX and 34 C.F.R. §106.31(a). Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature. Sexual harassment of a student creates a hostile environment if the conduct is so severe, persistent, and pervasive that it interferes with or limits a student’s ability to participate in or benefit from the recipient’s program or activity.

To determine how severe, persistent, and pervasive the harassment is, OCR considers a number of factors, applying both an objective and subjective lens to determine whether the totality of the circumstances indicate that the student was subjected to a sexually hostile environment in a school-related program or activity. These circumstances include the context, nature, scope, frequency, duration, and location of the incidents, as well as the identity, number, age and relationships of the persons involved. The more severe the conduct the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. In assessing whether a student was subjected to a sexually hostile environment, OCR also considers the relationship between the alleged harasser and the subjects of the harassment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment created a hostile environment, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects.

The evidence established that Student A was subjected to unwelcome conduct of a sexual nature when Student B poked her and rubbed her shoulders during the week of September 14, 2015, which created a hostile educational environment for Student A. As noted above, OCR considers the conduct in question from both an objective perspective and the subjective perspective of the person allegedly subjected to harassment. An allegation was made that Student B had previously harassed Student A in December of 2013, including XXXXXXXXXXXXXXXXXXXX. According to district records, Student B was suspended pending an investigation of these incidents.

However, OCR finds that the district did not complete its investigation or make a final determination regarding this incident because Student B unenrolled and did not re-enroll at the school for nearly 1½ years following his suspension. According to Student A’s parent, the impact of that previous harassment, combined with Student B’s sudden reappearance in her classroom after a year-and-a-half, and the multiple incidents of unwanted touching that occurred in September of 2015, led to anxiety for Student A and, ultimately, her withdrawal from school.

OCR determined that, based on the totality of the circumstances, that the student was subjected to a sexually hostile environment in a school-related program or activity that was sufficiently serious to

deny or limit the student's ability to participate in school. In the context of the severity of the sexual harassment by Student B of Student A in 2013, the conduct that occurred in 2015 was sufficiently severe to create a hostile environment for Student A.

The evidence established that the district had notice of the hostile environment. Although neither the superintendent nor the principal were employed by the district in December of 2013, the records of the December 2013 incident were readily available to them in September of 2015 and the parents of both Student A and Student B spoke with them about the December 2013 incidents during the time period when the district was attempting to determine an appropriate resolution. Moreover, Student B's parent called the district's attention to the previous incidents by asserting that the district's efforts to move Student B from Student A's classes was "fallout" from the previous incidents. The unwanted physical touching by Student B was promptly reported to both the superintendent and the principal and the district was on notice of the considerable impact that the incidents had on Student A.

OCR determined that the district failed to take prompt and effective responsive measures that were adequate to effectively address the harassment. The steps taken by the district did not remedy or minimize the burden on the alleged target. The school improperly attempted to push Student A into mediating the issue and improperly sought to address the hostile environment for student A by moving her out of her classes, while allowing Student B to remain because of the objection of Student B's parents. The evidence established that the school did not assess whether Student A required protection or interim services as a result of the alleged harassing conduct, and did not offer or discuss with Student A's parents the availability of such services without cost to Student A's family. Based on the foregoing, OCR concludes that the district failed to comply with the regulations implementing Title IX with regard to the issue investigated.

#### Title IX Requirements Regarding Grievance Procedures, Notice of Non-Discrimination, and Title IX Coordinator

During the course of OCR's investigation, OCR necessarily reviewed the district's grievance procedures, notice of non-discrimination and the designation of a Title IX coordinator. OCR identified a number of deficiencies with respect to the district's compliance with these procedural requirements under Title IX and its implementing regulations. The superintendent acknowledged that the district's Title IX grievance procedures were out of date and required review and revision and that he was in the process of conducting that review at the time the district was notified of the complaint. The superintendent also indicated that he is the district's Title IX coordinator and has requested assistance from OCR regarding adequate training on what constitutes sexual harassment and on revising the district's grievance procedures and notice of non-discrimination.

The Title IX regulations at 34 C.F.R. §106.8(b) requires the district to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination. Title IX does not require a district to provide separate grievance procedures for sexual harassment complaints. A district may use student disciplinary or other separate procedures for these complaints. To be compliant with Title IX, the grievance procedures must include: (1) notice to students and employees of the grievance procedures, including where complaints may be filed, that is widely distributed and easy to understand and locate (including definitions and explanations of sexual harassment and hostile environment, if necessary to ensure understanding); (2) application of

the procedure to complaints filed by students and employees or on their behalf, alleging sexual harassment carried out by employees, other students, or third parties; (3) provisions for adequate, reliable, and impartial investigation of complaints; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint; and (6) an assurance that the district will take steps to prevent recurrence of any sexual harassment and to correct its discriminatory effects on the complainant and others, if appropriate.<sup>3</sup>

In addition, although the Title IX regulations do not require them to be explicitly stated in the grievance procedures, the district must also ensure that it is: protecting individuals from retaliation, providing interim measures to protect parties in the educational setting, and using preponderance of the evidence as the standard when resolving a complaint of sexual harassment.<sup>4</sup>

The Title IX regulation at 34 C.F.R. §106.8(a) requires the district to designate at least one employee (Title IX coordinator) to coordinate the district's efforts to comply with and carry out its responsibilities under Title IX and to notify all students and employees of the name or title, office address, e-mail address, and telephone number of the responsible employee. The district must also ensure that the Title IX coordinator received adequate training on what constitutes sexual harassment and on how the district's grievance procedures operate.<sup>5</sup> In short, the Title IX coordinator plays an essential role in helping ensure that every person affected by the operations of the district—including students, their parents, employees, and applicants for admission and employment—is aware of the legal rights Title IX affords and that the district comply with its legal obligations under Title IX.

The Title IX regulation at 34 C.F.R. §106.9 requires the district to implement specific and continuing steps to notify students, parents of elementary and secondary students, employees, and other specified individuals and entities that the district does not discriminate on the basis of sex in its educational programs and activities. According to Section 106.9(a)(1), the notice of non-discrimination must contain information that the district does not discriminate based on sex in its educational activities or programs, that Title IX requires the district not to discriminate based on sex, that this non-discrimination policy applies to students, employees, and applicants for admissions and employment, and that questions to the district concerning the application of Title IX and its implementing regulations may be referred to the employee designated as the Title IX coordinator or OCR's Assistant Secretary. According to Section 106.9(b), the notice of non-discrimination must be disseminated prominently in the district's on-line and printed publications, including bulletins and course schedules to students and employees.

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<sup>3</sup> See 2001 OCR Revised Sexual Harassment Guidance, at 20).

<sup>4</sup> See 2001 OCR Revised Sexual Harassment Guidance at 16, 17, 19, and 20; and 34 C.F.R. §106.71.

<sup>5</sup> See 2001 OCR Revised Sexual Harassment Guidance at 21.



### Prompt and Equitable Grievance Procedures

OCR has determined that the district's grievance procedures do not provide adequate notice of the policies and procedures to students, parents or employees, has not been widely disseminated, and does not indicate where harassment complaints may be filed. The grievance procedures contain limited information and explanations regarding what constitutes student on student sexual harassment and appear to focus almost entirely on harassment of students by district employees. In addition, the grievance procedures do not include any provisions that appear intended to insure an adequate, reliable and impartial investigation of complaints, indicating only that the complaint will be investigated by the building principal (or superintendent if the complaint is against the principal) within certain time parameters.

The timeframes in the district's grievance procedures provide for a reasonably prompt conclusion, calling for a conference with the complainant within 5 school days, followed by a written response within 10 school days following the conference, the right of the complainant to file an appeal within 5 days to the superintendent, and a response from the superintendent within 10 school days.<sup>6</sup>

The grievance procedures call for a written response to the complaint at every stage but do not indicate that the parties are to be provided with notice of the outcome and they do not contain any provisions requiring the district to assure that it will take steps to prevent recurrence of sexual harassment and correct its discriminatory effect on the complainant and others, if appropriate.

Although the grievance procedures indicate that no reprisals or retaliation will be permitted based on the good faith reporting of a complaint of harassment, they do not specifically reference protection from retaliation under Title IX. Finally, the procedures do not contain any specific provisions regarding interim measures that are to be taken to protect parties in the education setting or any provision articulating that a preponderance of evidence standards is to be utilized when resolving a complaint of sexual harassment.<sup>7</sup>

### Notice of Non-Discrimination

With respect to the district's notice of non-discrimination, the evidence established that the district had not sufficiently provided notice to staff and students consistent with the Title IX regulatory requirements. The district website, school website and the employee and student handbooks for the Harbor Lights Middle School do not contain any statement of non-discrimination on the basis of sex, any reference to Title IX, or any information indicating that questions concerning the application of Title IX and its implementing regulations may be referred to the employee designated as the Title IX coordinator or to OCR's Assistant Secretary. OCR determined that the information provided to the school community was inadequate to provide notice to students or employees concerning discrimination on the basis of sex in its educational programs or activities.

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<sup>6</sup> The procedures call for a meeting with the superintendent after an appeal is filed but does not specify the time period within which that meeting is to be held. The procedures are not clear with respect to whether the superintendent's response is due within 10 school days from the date that the appeal is filed or within 10 school days from the date that the complainant meets with the superintendent.

<sup>7</sup> See 2001 OCR Revised Sexual Harassment Guidance at 16, 17, 19, and 20; and 34 C.F.R. §106.71.

No other publications were provided which would suggest that the students and staff had received the required notice. For all these reasons, OCR has determined that the district has not met its obligation to provide a notice of non-discrimination on the basis of sex.

#### Designation of Title IX Coordinator

The evidence establishes that currently the superintendent is “nominally” designated as the Title IX coordinator for the district. But the evidence shows that he does not have adequate training and that the district did not provide his name or title and contact information to students and employees as the person responsible for receiving and resolving Title IX complaints. OCR found no such information in the district’s publications or on its website. Moreover, OCR found no evidence that the district effectively designated a Title IX coordinator in accordance with the title IX regulatory requirements during the time period under investigation.

Accordingly, OCR found sufficient evidence to establish that the district failed to comply with the notice, grievance procedure, and coordinator requirements of the Title IX implementing regulations. Therefore, OCR concluded that the district violated Title IX and its implementing regulations with respect to this issue.

The district has voluntarily agreed to resolve the above described violations as set forth in the enclosed Resolution Agreement (Agreement) which, when fully implemented, will resolve the identified violations. OCR will monitor the district’s implementation of the Agreement and will close the complaint when OCR determines that the terms of the Agreement have been satisfied. The district’s first monitoring report was scheduled to be submitted on October 11, 2016.

This letter sets forth OCR’s determination in an individual OCR case and should not be interpreted to address the district’s compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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.

This concludes OCR’s investigation of the complaint. 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, 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, 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.

OCR will monitor the implementation of the Agreement and will close the complaint when OCR determines that the terms of the Agreement have been satisfied. The first report under the Agreement is due by October 11, 2016.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please contact Samuel Garcia, Equal Opportunity Specialist, by telephone at (206) 607-1676, or by e-mail at [samuel.garcia@ed.gov](mailto:samuel.garcia@ed.gov); or you may contact Timothy L. Sell, Senior Attorney, by telephone at (206) 607-1639, or by e-mail at [timothy.sell@ed.gov](mailto:timothy.sell@ed.gov).

Sincerely,

Paul Goodwin  
Team Leader

Enclosure: Resolution Agreement

cc: Honorable Dr. Salam Noor, Deputy Superintendent of Public Instruction