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June 25, 2018

Dr. Deena Paramo
Superintendent
Anchorage School District
5530 E. Northern Lights Boulevard
Anchorage, Alaska 99504-3135

Re: Anchorage School District
OCR Reference Nos. 10171153, 10171339, and 10181059

Dear Superintendent Paramo:

This letter is to inform you of the disposition of the above-referenced complaints filed against the Anchorage School District (district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). OCR initiated investigations into the following:

Whether the district:

1. discriminated against Student A and Student B at XXXXXXXXXXXX Charter School by failing to provide prompt and equitable responses to incidents of sexual harassment, including sexual violence, by Student C and subjecting Student A and Student B to a hostile environment;
2. adopted and published grievance procedures that provided for the prompt and equitable resolution of complaints alleging sexual harassment;
3. properly designated an employee to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 (Title IX);
4. responded appropriately to incidents of sexual harassment, including sexual violence, of Student E and other students by Student D at XXXXXXXXXXXX Middle School, including whether the school took proper steps to address a hostile environment that may have existed at the middle school or may have later carried over to XXXXXXXXXXXX High School as a result of the sexual harassment;
5. responded appropriately to incidents of sexual harassment of Student E by other students at the high school, including whether the school took proper steps to address a hostile environment that may have existed for Student E as a result of this sexual harassment;
6. responded appropriately to acts of retaliation against Student E at the high school for participating as a witness in a sexual harassment investigation;
7. responded appropriately to incidents of sexual harassment, including sexual violence, of Student F by Student D during the 2016-2017 school year at the middle school, including whether the school took proper steps to address a hostile environment that may

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- have existed and that may have carried over to the high school as a result of the sexual harassment; and
8. responded appropriately to acts of retaliation against Student F during the 2017-2018 school year at the high school for participating as a witness in a sexual harassment investigation.

During the course of OCR’s investigation, OCR received information from the district indicating that Student F received special education services under an Individualized Education Plan (IEP) during the time the alleged sexual harassment and retaliation occurred. Accordingly, OCR also investigated whether the district discriminated against Student F on the basis of disability by failing to determine whether the alleged sexual harassment and retaliation impacted the student’s receipt of a free and appropriate public education (FAPE).

As explained below, prior to OCR completing a full investigation of the three complaints and making final determinations, the district expressed an interest in voluntarily resolving the complaints and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaints’ allegations.

OCR enforces Title IX and Section 504 of the Rehabilitation Act of 1973 (Section 504), and their implementing regulations. These federal civil rights laws prohibit discrimination on the bases of sex and disability, respectively, in programs and activities receiving federal financial assistance. OCR also enforces Title II of Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability by public entities. The implementing regulations of Title IX, Section 504, and Title II also prohibit retaliation by intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by these federal civil rights laws or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under OCR regulations. The district receives federal financial assistance from this Department and is a public entity. Therefore, it is subject to Title IX, Section 504, and Title II.

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that, except as provided elsewhere in the regulation, “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 of Federal financial assistance.”

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX at 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, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student’s ability to participate in or benefit from the recipient’s program.

If a recipient knows or reasonably should have known about sexual harassment by employees, other students or third parties, Title IX requires a recipient to respond promptly and effectively to reports of sexual harassment. Once a recipient has notice of possible sexual harassment of students, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably

calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action. If a recipient fails to respond appropriately to a report of sexual harassment, and this failure permits a student to be subjected to a hostile environment, the recipient is also responsible for taking corrective action to remedy the effects on the student or students that could reasonably have been prevented had it responded promptly and effectively.¹

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX (Title IX coordinator), including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. OCR has identified a number of elements in evaluating whether grievance procedures provide for a prompt and equitable resolution, including whether the procedures address: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; (c) adequate, reliable, and impartial investigation, including the opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for the major stages of the complaint process; (e) notice to the parties of the outcome of the complaint; and, (f) an assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

The Section 504 regulation at 34 C.F.R. §104.33(a) states that a recipient operating a public elementary or secondary education program shall provide a FAPE to each qualified individual with a disability. FAPE, as defined in 34 C.F.R. §104.33(b)(1), is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of a person with a disability as adequately as the needs of non-disabled persons are met, and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §104.34, 104.35, and 104.36. The development and implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standards set forth in 34 C.F.R. §104.33(b)(1)(i) and (ii).

Harassment or bullying of a student with a disability on any basis may adversely impact a school district's provision of FAPE to a student. Thus, under Section 504, a school district has an ongoing obligation to ensure that a student with a disability who is the target of harassment or bullying – whether based on disability or for any other reason – continues to receive FAPE in accordance with his or her IEP. Accordingly, under Section 504, as part of a school's appropriate response to bullying on any basis, if a school knows or should have known that the effects of the bullying may have affected the student's receipt of FAPE, the school must promptly determine whether the student's educational needs are still being met, and if not, make changes as necessary to his or her IEP or 504 plan.

¹ For further clarification, see OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at 12.

In each of the three above referenced complaints, it is alleged that the students were subjected to unwelcome sexual conduct which they reported to the district, the district failed to take appropriate action in response to those complaints, as a result the harassment continued and/or retaliation occurred, which subjected the students to a hostile educational environment. In its investigation to date, OCR identified that the district did have notice of each of these instances and that the district may have failed to take appropriate action in response to the reports of unwelcome sexual conduct made to the district; as a result of this potential failure to take appropriate action, harassment may have continued and retaliation may have occurred.

Additionally, during the course of its investigation, OCR identified deficiencies in the district's written grievance procedures with respect to: notice to students and employees of the procedures, including where complaints may be filed; application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigations, including the opportunity to present witnesses and evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; and, an assurance that the institution would take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. OCR also determined that the district appropriately designated and notified individuals of its Title IX coordinator in accord with Title IX's implementing regulation at 106.8(a). Finally, OCR's investigation to date indicated that the district potentially knew or should have known that the effects of the harassment may have affected Student F's receipt of FAPE and that the school may not have promptly determined whether the student's educational needs were still being met.

Prior to OCR making a final determination regarding the issues investigated in the three complaints, the district expressed an interest in voluntarily resolving these complaints, and in accordance with Section 302 of the OCR *Case Processing Manual*, OCR determined that it was appropriate to enter into a voluntary resolution agreement to resolve the issues under investigation. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

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 complaints. The complainants may have the right to file private suits in federal court regardless of OCR's determination.

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.

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OCR will monitor the implementation of the agreement and will close the complaints when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Tina Sohaili, Attorney, by telephone at (206) 607-1634 or by e-mail at tina.sohaili@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement