



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

May 27, 2014

Dr. Johnny Hunt
Superintendent
Public Schools of Robeson County
410 Caton Road
Lumberton, North Carolina 28360

RE: OCR Complaint No. 11-13-1230
Letter of Findings

Dear Dr. Hunt:

This letter is to inform you of the disposition of the May 15, 2013 complaint that the Complainant filed with the U.S. Department of Education (the Department), District of Columbia Office for Civil Rights (OCR), against the Public Schools of Robeson County (the District). The Complainant filed the complaint on behalf of XXXX (the Student). The complaint alleged that the District, in particular XXXX (the School), discriminated against the Student on the basis of sex. Specifically, the Complainant alleged that the District discriminated against the Student based on sex, during or around the XXXX, by failing to promptly and equitably respond to the Student being sexually assaulted at the School XXXX (XXXX).

OCR requested and reviewed information from the Complainant and the District. For the reasons discussed below, OCR found that the District failed to promptly and equitably respond to the sexual assault, as alleged. On May 16, 2014, the District signed a resolution agreement which, when fully implemented, will resolve the areas of noncompliance identified during OCR's investigation. (See attached Resolution Agreement). Below, please find a summary of OCR responsibilities, applicable legal standards and a summary of our investigation and conclusion.

Applicable Legal Standards and Authority

OCR initiated an investigation of the complaint under its authority for enforcing Title IX of the Education Amendments Act of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance (FFA) from the Department. Because the District is a recipient of FFA, it is subject to the provisions of Title IX and its implementing regulation.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The regulation implementing Title IX, 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 education program or activity operated by a recipient of FFA. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.¹ Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, 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.

In determining whether this denial or limitation has occurred, OCR examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred in the district; and other relevant factors. 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. For example, a single instance of rape is sufficiently serious to create a hostile environment. It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgment in determining whether a hostile environment has been created.

When a school knows or reasonably should know of possible sexual harassment including sexual violence or other sexual harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation. The school should take these steps promptly once it has notice of a sexual harassment allegation and should provide the complainant with periodic updates on the status of the investigation. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator. For instance, the school district may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and the

¹ The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011), for further clarification on this topic, see "Questions and Answers on Title IX and Sexual Violence" (Apr. 29, 2014), which is available at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. See also OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (Oct. 26, 2010); OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, which is available at: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001).

alleged perpetrator, a school district should minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from classes while allowing the alleged perpetrator to remain. In addition, school districts should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, victim advocacy, academic support, and, if appropriate, their right to file a complaint with local law enforcement. If the school determines that the sexual harassment occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary.

If a school delays responding to allegations of sexual harassment or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual harassment that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Title IX does not require a school district to provide separate grievance procedures for sexual harassment complaints; however, a school district's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX. If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. School districts need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. School districts should take steps to prevent any retaliation against a student who makes a complaint or any student who provides information regarding the complaint. At a minimum, under Title IX, the districts must ensure that complainants and their

parents, if appropriate, know how to report any subsequent problems, and should follow up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

In addition, if there is an incident involving potential criminal conduct, the school district must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. But a school district's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a school district of its independent Title IX obligation to investigate the conduct. Although a school district may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school district must promptly resume and complete its fact-finding for the Title IX investigation. Moreover, the criminal investigation should not prevent a school district from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the community while the law enforcement agency's fact-gathering is in progress. These duties are a school district's responsibility, regardless of whether a student has complained, asked the district to take action, or identified the harassment as a form of discrimination.

Further, a school district should provide training to employees about its grievance procedures and their implementation. A school district should provide such training to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, law enforcement unit employees, administrators, guidance counselors, health personnel, and other employees. A school district needs to ensure that its employees are trained so that they know to report harassment to appropriate officials, and so that employees with the authority to address harassment know how to respond properly.

Background

<XXXX FIVE SENTENCES REDACTED XXXX> On XXXX, the School banned XXXX from its campus. The Complainant alleged that the School neither spoke with the Student nor interviewed any witnesses regarding the Incident, and this was supported by the other investigative evidence OCR gathered.

Analysis

OCR's review of the investigative evidence indicates that the District did not investigate the alleged sexual assault reported by the Complainant and failed to take immediate interim measures to protect the Student from the Former Student, as required by Title IX. As mentioned earlier, if a school knows about possible sexual harassment, Title IX requires it to take immediate action to investigate it and to protect the alleged victim. In this case, the Complainant brought the incident to attention of School staff on XXXX. The investigative evidence indicated that the School initially failed to take any interim measures to protect the Student; the School's only interim measure, eventually, was to ban XXXX from the School XXXX. The School never conducted its own investigation.

The District's attorney indicated to OCR that the District did not conduct its own investigation because a criminal complaint had been filed. However, as discussed above, a law enforcement investigation does not relieve a school of its Title IX obligation to investigate an alleged act of sexual harassment. OCR notes that an appropriate investigation by the District would have entailed determining whether the alleged incident had occurred and, if it did, whether it created a hostile environment for the Student, witnesses or other students at the School. If the District found there had been sexual harassment that gave rise to a hostile environment, it would have been obligated to take prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

To assess the District's compliance with Title IX, OCR considered other information obtained from the District during the course of the investigation. Specifically, OCR reviewed the District's Title IX grievance procedure and the sexual harassment training materials provided to District personnel.

To address OCR's findings, OCR entered into the attached Resolution Agreement, which requires the District to revise its Title IX grievance procedure, provide comprehensive training and education for District personnel and students on harassment, and assess the school climate. OCR will monitor the District's compliance with the Agreement.

This concludes OCR's investigation of this complaint. OCR will monitor the District's compliance with the Resolution Agreement. 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 note that no person is permitted to intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint with or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment. Additionally, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you should have any questions regarding this letter or its contents, please contact Selena Fox, OCR Senior Attorney, at (202) 453-5910 or, via e-mail, at Selena.Fox@ed.gov.

Sincerely,

/S/

Kay Bhagat

Team Leader, Team III
District of Columbia Office

Enclosure

CC: Attorney Grady Hunt