



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

XXXX

Dr. Andrew G. Houlihan
Superintendent
Union County School District
400 North Church Street
Monroe, NC 28112

RE: OCR Complaint No. 11-15-1025
Resolution Letter

Dear Dr. Houlihan:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXX against the Union County School District (the District) by the Complainant on behalf of XXXX (the Student), a student at XXXX (the School). The Complainant alleges the School failed to promptly and equitably respond to the Student's XXXX.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex, including XXXX harassment, in any program or activity receiving federal financial assistance. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. The Title IX implementing regulation at 34 C.F.R. § 106.31(a), states 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 educational program or activity operated by a recipient of Federal financial assistance.

XXXX harassment that creates a hostile environment is a form of discrimination prohibited by Title IX. XXXX harassment is unwelcome conduct of a XXXX nature, regardless of the sex of the student. XXXX harassment can include unwelcome XXXX advances, requests for XXXX

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

favours, and other verbal, nonverbal, or physical conduct of a XXXX nature, such as XXXX assault or acts of XXXX violence. XXXX harassment of a student creates a hostile environment if the conduct is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities.

OCR considers a variety of related factors to determine if a hostile environment based on sex has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct 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 of the alleged harasser and the subject of the harassment, the size of the school, the location of the incidents and the context in which they occurred; and other incidents at the school.

A recipient has notice of harassment based on sex if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school official's XXXX harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

Once a recipient knows or reasonably should know of possible XXXX harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation or other inquiry reveals that XXXX harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment if one has been created, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether or not the student who was harassed makes a complaint or otherwise asked the recipient to take action. If, upon notice, a recipient fails to take prompt and effective corrective action, the recipient's own failure has permitted the student to be subjected to a hostile environment. If so, the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively.

In situations where reported XXXX harassment may constitute a criminal act, a recipient should notify a complainant¹ of the right to file a criminal complaint with local law enforcement, and should not dissuade a complainant from doing so either during or after the recipient's internal Title IX investigation. Additionally, recipients must take immediate steps to protect the complainant and allow continued access to the recipient's programs and activities.

¹ XXXX SENTENCE REDACTED XXXX.

It may be appropriate for a recipient to take interim measures during the investigation of a complaint to ensure that the parties receive equal access to educational program and activities prior to the final outcome of an investigation. In fairly assessing the need for a party to receive interim measures, a recipient may not rely on fixed rules or operating assumptions that favor one party over another, nor may a recipient make such measures available only to one party. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator (or other designated responsive employee(s)), making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

There is no fixed time frame under which a recipient must complete a Title IX investigation. OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case. In addition, a recipient should ensure that all designated employees have adequate training as to what conduct constitutes XXXX harassment and are able to explain how the grievance procedure operates.

For Title IX purposes, a recipient should also provide notice of the outcome of disciplinary proceedings to the complainant and the responding party concurrently (preferably in writing). The content of the notice may vary depending on the underlying allegations, the institution, and the age of the students. This notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions. For proceedings in elementary and secondary schools, the school should inform the complainant whether it found that the alleged conduct occurred, any individual remedies offered to the complainant or any sanctions imposed on the responding party that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school found one to exist. In an elementary or secondary school, the written notice should be provided to the parents of students under the age of 18 and directly to students who are 18 years of age or older.

Summary of Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on January 2, 2018.

Background

XXXX 2 PARAGRAPHS REDACTED XXXX

District's XXXX Harassment Policies:

The District informed OCR that at the time of the incident, the District's policy² for handling student XXXX harassment complaints (peer-on-peer complaints) required the following:

1. Report:
 - a. If a staff member is aware of a student being XXXX harassed, s/he must report it to a school administrator or the Title IX Coordinator.
2. Investigation:
 - a. A prompt investigation will occur to include interviews with the alleged harasser, the victim, and any potential witnesses.
 - b. There will be no meetings between the alleged harasser and the victim during this process and all information will remain confidential throughout this process.
3. Investigation Report:
 - a. Within 15 days of the receipt of the complaint, the following will take place:
 - i. Investigator will make a written report of the findings, unless extenuating circumstances require additional time;
 - ii. Investigator shall notify the complainant of the results or the reason why additional time is needed;
 - b. At the conclusion of the investigation the complainant shall be notified that the investigation is complete and that policy was followed; and
 - c. The alleged harasser shall be notified of the result and any consequences that will be taken. Unless there are consequences directly related to the victim, the victim shall not be made aware of the consequences imposed on the alleged harasser.

Analysis:

As discussed above, OCR finds that, XXXX, the Student made a report of peer based XXXX. On that same day, the complaint was reported to the District's Title IX Coordinator. Immediately after receiving the complaint, the School began its investigation. XXXX 3 SENTENCES REDACTED XXXX.

XXXX PARAGRAPH REDACTED XXXX.

As stated above, the District provided OCR documentation of a written investigative report, in accordance with their policy; however, the report lacks a finding, in contravention of the

² OCR determined that the District has since revised their XXXX harassment complaint procedures for students pursuant to a resolution agreement in OCR Case XXXX. This includes a clarification that notice of outcome to both parties must be in writing. OCR monitored and approved these procedures. OCR determined that this draft of the procedures currently remains in effect.

District's policy. Notwithstanding, based on interviews conducted with the Principal, they were not able to corroborate the claim of XXXX harassment against the Student, using the preponderance of the evidence standard³. According to the Principal, the parents of both students were notified, orally, of the outcome of the investigation. However, the Complainant denies receiving oral notification. OCR asked the Principal for additional information or documentation regarding his reporting to the parents of both students; however, he was not able to recall specifically what he told the Student's parents regarding the outcome of the investigation, nor did he have any additional documentation. The District's policy, at the time, did not provide for an appeal process, and there is no indication that either party appealed the decision.

Based on the above, OCR finds that the District generally responded to the Student's September 18th complaint of XXXX harassment in a prompt and equitable manner, including interviewing relevant witnesses and completing its investigation within one day of receiving the complaint. Nonetheless, OCR has a preliminary concern regarding whether the parties received notification of the outcome of the investigation. Specifically, the Complainant and the District provided conflicting accounts of whether such notification occurred. The District was unable to provide OCR with any documentation supporting the fact that they provided notice, despite the fact that OCR determined that on XXXX, in response to a separate report of XXXX harassment by the Student, the District drafted written notice of the outcome in that instance. Accordingly, OCR has a preliminary concern that the District failed to provide notice of outcome to the parties. Notwithstanding, on January 2, 2018, the District agreed to enter into the attached agreement to voluntarily resolve OCR's concerns regarding this allegation.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on February 27, 2018, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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.

³ At the time of the complaint, the District used the preponderance of the evidence standard when investigating complaints of XXXX harassment/assault.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact the attorneys assigned to this matter Kendra Riley, at 202-453-5905 or kendra.riley@ed.gov; or Jeanette Tejada Bustos, at 202-453-6084 or jeanette.tejadabustos@ed.gov.

Sincerely,

/s/

David Hensel
Team Leader
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Michele E. Morris, Esq.