



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

March 10, 2017

Dr. Jared A. Cotton
Superintendent
Henry County Public Schools
PO Box 8958
Collinsville, Virginia 24078-8958

RE: OCR Complaint No. 11-15-1253
Resolution Letter

Dear Dr. Cotton:

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 Henry County Public Schools (the Division) and, specifically, XXXX (Schools). The Complainant alleges that the Division discriminated against XXXX (the Students) on the basis of sex. The Complainant specifically alleged that during the XXXX school year, the Division and Schools discriminated against the Students on the basis of sex by:

- (1) permitting a hostile environment based on sex to exist at the Schools when it failed to promptly and effectively respond to incidents in which the Students were subjected to peer harassment, including XXXX and,
- (2) failing to follow appropriate grievance procedures to resolve the Complainant and the Students' complaints of discrimination based on sex at the Schools.

Before OCR completed its investigation, the Division 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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division and interviewed the Complainant and Division faculty/staff.

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns. The Division agreed to resolve the concerns through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

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

Factual Background

Student A and Student B are XXXX students in the Division. At the time this complaint was filed, Student A was in XXXX grade at XXXX (the High School) and Student B was in XXXX grade at XXXX (the Middle School).¹ The Complainant and the Students notified the Middle School of several incidents of alleged sexual harassment prior to and throughout the XXXX school year. During the XXXX school year, Student A XXXX. The Complainant informed OCR that XXXX were due in large part to the alleged bullying and harassment at the Middle School. The Complainant also informed OCR that Student A has been diagnosed with XXXX and Student B has been diagnosed with XXXX.² The Complainant believes these diagnoses are due in part to the multiple alleged incidents of sexual harassment at the Middle School.

Legal Standards

The Title IX regulation 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, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

A division's failure to respond promptly and effectively to sexual harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title IX. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the Division's programs, activities, or services. When such harassment is based on sex, it violates Title IX.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a Division must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a Division must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

¹ The Complainant informed OCR that she had no concerns regarding the High School.

² Neither student has been evaluated for special education services.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires that divisions adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. OCR examines a number of factors in evaluating whether a Division’s grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Analysis

The Complainant informed OCR staff about incidents of sexual harassment that allegedly occurred while the Students were enrolled at the Middle School. The reported concerns included derogatory sexual comments from peers as well as peers XXX the Students without their consent.³ The Complainant told OCR that the Middle School failed to address these sex-based incidents appropriately. However, the Division stated that it investigated any complaints made by the Complainant and the Students.

The Complainant stated that she and the Students reported many incidents throughout their time at the Middle School but that the following specific incidents were reported to Middle School administrators within 180 days of the filing of this complaint:

XXXX PARAGRAPH REDACTED XXXX.

The Assistant Principal informed OCR that she did not report the XXXX, incident to the Title IX Coordinator or indicate that the incident was related to sex on the incident report. Disciplinary action was taken against Student A for XXXX but the Assistant Principal determined that the allegation regarding XXXX was unfounded. The Division noted in their response that all XXXX after this investigation concluded. However, the Complainant informed OCR that XXXX continued after this investigation and the Middle School was aware that XXXX persisted. Although this incident was included in the first incident log provided by the Division, there was no mention of XXXX.

XXXX SENTENCE REDACTED XXXX. The Assistant Principal informed OCR that she conducted an investigation and determined there was no direct evidence that the incident took place and therefore the allegation was unfounded. The Assistant Principal said no students reported hearing the comment and that the teacher, who was in the classroom at the time of the alleged incident, was unaware of the incident. The incident was not reported to the Title IX Coordinator and no disciplinary action was taken. However, the Assistant Principal informed OCR that Student B was required to see a counselor, an administrator was assigned to eat lunch with Student B, and Student B’s class schedule was changed to avoid classes with XXXX. The

³ The alleged incidents are discussed in further detail below.

Complainant informed OCR that the counseling services were beneficial to Student B, but that she was not aware that a staff member had been eating lunch with Student B. This incident was not included in the incident logs provided by the Division.

XXXX SETENCE REDACTED XXXX. According to the Division’s narrative response to OCR’s request for data, a second assistant principal at the Middle School (Assistant Principal 2) met with each student and interviewed witnesses. Several students said they saw XXXX. The Division informed OCR that a conference was held with the accused student and his parent. No documentation was provided by the Division regarding this conference. Additionally, this incident was not included on the first incident log provided by the Division. The second incident log supplied by the Division noted the incident but did not categorize this incident as harassment or bullying based on sex. This incident was also not reported to the Title IX Coordinator.

XXXX SENTENCE REDACTED XXXX. The Assistant Principal informed OCR that although she conducted an investigation, she determined that the allegation was unfounded because there was no clear evidence that the incident happened. Specifically, the Assistant Principal said she looked at the students’ schedules to determine when the incident could have taken place. When she determined that it was unlikely that the students had crossed paths, she determined the allegation was unfounded. The Assistant Principal stated that she did not interview anyone other than Student B because the Assistant Principal believed there were no direct witnesses. However, the Division’s data includes notes from a conversation with the accused student. It is unclear who took the notes.

The XXXX incident was not reported to the Title IX Coordinator. However, the Assistant Principal informed OCR that as a result of this allegation, Student B’s teachers were informed that Student B should not travel anywhere by herself and that she should always be in view of a teacher or her counselor. Each time a new allegation was made, the administrators emphasized to the teachers that Student B “needed to travel with an adult.” The Complainant informed OCR that she was unaware of this requirement. This incident was not included in the incident logs provided by the Division.

On XXXX, Student A reported that another student XXXX. The Division informed OCR that the comment was not used in a sexual context. The Division also informed OCR in their narrative response that the accused student was XXXX. No investigative documents were provided by the Division for this incident. According to the second incident log supplied by the Division, this incident was not noted as being related to harassment or bullying based on sex. This incident was also not reported to the Title IX Coordinator.

According to the Complainant and the Students, there were several other incidents involving XXXX and sexual comments made by other students to the Students both in person and through social media, but it is unclear if these incidents were reported or investigated. The Assistant Principal could not recall if she was involved in any other incidents involving Student B and did not believe she was involved in any other incidents involving Student A.

When OCR interviewed the individual who served as the Division’s Title IX Coordinator during the time of the allegations (the Coordinator), she stated that students who report incidents of

alleged sexual harassment have the option of choosing whether the Middle School will formally or informally investigate their complaints. The administrator assigned to the complaint then determines if there is enough information to conduct an investigation. The Coordinator said that only if the student chooses a formal investigation will the Division's investigative procedures be applied. If a formal investigation is not completed, the Coordinator is usually not notified or involved in any way. She informed OCR that there have been zero formal reports of sexual harassment or misconduct in the last three years and that she may have been casually notified of about five informal complaints, none of which she was directly involved in at any point.

The Coordinator also informed OCR that whether or not the allegation is "perception or real," the complaining student is provided with counseling services and a plan is developed to address the issue. When asked about Student A and Student B, the Coordinator informed OCR that she was aware of Student A because of the provision of homebound services, but did not know who Student B was and she was unaware of any complaints of sexual harassment or bullying involving either student.

OCR also spoke with the Principal of the Middle School (the Principal) who outlined a specific procedure used for allegations of sexual harassment or misconduct but stated that he was not aware of any informal procedure. When asked specifically about the process described by the Assistant Principal and the Title IX Coordinator, the Principal indicated that the informal process does happen, but it could still warrant discipline depending upon the outcome. He noted that the assistant principals are responsible for determining whether an allegation is founded or unfounded. The Principal confirmed that even if the allegation is unfounded, the administrators would inform the complaining student's teachers of the complaint, provide the complaining student with counseling, and rearrange the complaining student's class schedule to ensure the involved students do not interact. The Principal informed OCR that he knew the Assistant Principal had met with Student B, but he had no direct involvement with either student and does not believe he informed the Title IX Coordinator of any incidents involving either student.

Based on the totality of the circumstances, OCR has determined there are compliance concerns regarding whether the Students were subjected to a sexually hostile environment while they attended the Middle School and whether the Division responded appropriately to the information provided to them by the Students and Complainant. Each of the incidents directly involved Student A and/or Student B and occurred within one school year (though there were allegedly several additional incidents that occurred prior to the XXXX school year). OCR determined that there were concerns regarding the Division's response to the complaints of sexual harassment, particularly concerning the Middle School's informal process and the requirement that there be direct evidence in order for a finding to be made. Additionally, OCR has concerns regarding the limited scope of each investigation; the lack of interviews or interview notes, the measures taken against the reporting student after no finding was made, and the lack of consistency in staff members' understanding of the Division's policies and procedures.

OCR is also concerned about whether Middle School appropriately responds to reports of students making sexual comments or XXXX in the hallways. In particular, OCR notes that comments alone, without physical conduct, can contribute to a hostile environment. Although taken individually, one incident may or may not amount to a sexually hostile environment, taken

together the incidents may be sufficiently severe or pervasive to rise to the level of sexual harassment. Additionally, a dating relationship between students does not eliminate the potential for sexually inappropriate commentary or actions that may be against either party's wishes and contribute to a sexually hostile environment. OCR is also concerned with the Title IX Coordinator's lack of involvement in complaints alleging sexual harassment or misconduct.

As stated above, OCR considers the totality of the circumstances from both an objective and subjective perspective when determining whether or not a sexually hostile environment exists. In particular, OCR examines the context, nature, scope, frequency, duration, and location of the incidents. OCR will also consider the identity, number, and relationships of the persons involved. In this case, the Students' reported five separate incidents of alleged sexual harassment, though the Complainant and the Students noted that there were likely additional incidents that may not have been investigated or reported. The incidents took place on the School's property, in classrooms and hallways, and at a School XXXX and were perpetrated by several male and female students at the School. One incident involved a male student allegedly XXXX. The remaining incidents involved inappropriate comments, questions, and rumors directed toward one or both of the Students.

The incidents investigated by staff members at the School spanned a XXXX time-period, with incidents occurring in XXXX school year. There were several additional incidents that were reported by the Students and investigated by School staff members, but took place outside of 180 days of the filing of this complaint. In order to complete the investigation into this allegation, OCR would need to interview potential witnesses as well as the administrators the incidents were reported to and the additional assistant principals responsible for investigating these reports. OCR would also need to review any similar complaints filed by other students in the Division.

Consistent with the legal standard stated above, OCR also considered whether the Division conducted a prompt and equitable investigation into the Students' allegations. OCR has concerns about the adequacy of the investigations into the several incidents alleged by the Students. OCR is particularly concerned with the informal investigative process being used by the administrators and the failure to consider or address the potentially hostile environment created by the incidents. The Division provided little to no documentation for each incident described above and staff members did not inform the Title IX Coordinator of any of the incidents. Additionally, OCR is concerned with the Assistant Principal's requirement that there be "direct evidence" of an incident in order to take any responsive action. Prior to finding a violation, OCR would need to speak with the other administrators responsible for investigating allegations of sexual harassment and review their investigative documents. OCR would also need to speak with the Division's new Title IX Coordinator to discuss the revised policies and procedures and any other changes that have been implemented. Before taking the steps described above to complete this investigation, the Division expressed a desire to resolve this complaint by entering into a voluntary Resolution Agreement (discussed further below) with OCR. OCR has agreed to enter into a Resolution Agreement with the Division to resolve the complaint.

In anticipation of that Resolution Agreement and during the investigation of this complaint, the Division scheduled trainings for all administrative staff members involved in the investigation of complaints related to Title IX. At OCR's request, the Division submitted the training materials

and the trainer's resume for review and approval. The materials and trainer were approved by OCR and the trainings took place on February 21 and 28, 2017. The Division submitted sign-in sheets confirming that all staff members involved in the investigation of complaints related to Title IX attended a training. Because these trainings were approved and provided prior to the signing of the Resolution Agreement, there is no further training required by the Agreement.

Title IX Grievance Procedures:

In reviewing the Division's Title IX Grievance Procedures, OCR noted several compliance concerns. In particular, OCR had concerns about the potential inequities, the lack of clarity regarding notice to involved parties, the adequacy and reliability of the investigation process, and the failure to provide interim measures prior to the conclusion of the investigation. OCR was also concerned with the lack of information regarding the Division's informal process, which, although not mentioned in the procedures, was repeatedly referenced during interviews with staff members. However, during the investigation of this complaint, the Division revised the Grievance Procedures and posted them to the Division's website. OCR reviewed these revised procedures and found them to be in compliance with Title IX. OCR notes that, as part of the Resolution Agreement (discussed further below), the Division has agreed to disseminate a notice to all parents and staff that includes links to their policies and procedures. They have also provided training on the policies and procedures to all responsible staff members.

Conclusion

On March 9, 2017, the Division agreed to implement the enclosed Resolution Agreement (Agreement), which commits the Division to take specific steps to address the identified areas of concern. Pursuant to Section 302 of OCR's *Case Processing Manual*, the Agreement will, when fully implemented, resolve the areas of concern. OCR will closely monitor the Division's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the Division has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues raised. As stated in the Agreement entered into by the Division on March 9, 2017, if the Division fails to implement the Agreement, OCR may reopen the investigation into the allegations. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the Division written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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.

Please be advised that the Division 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, or participates in an OCR proceeding. 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 Division's cooperation in the resolution of this complaint. If you have any questions, please contact Katie Teigen, the OCR attorney assigned to this complaint, at 202-453-5564 or Katie.Teigen@ed.gov.

Sincerely,

/s/

Kristi R. Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Ms. Anne Witt at Reed Smith, LLP
Counsel for the Division