



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

July 9, 2020

Via Email to del.burns@nhcs.net

Dr. Del Burns
Interim Superintendent
New Hanover County Public Schools
6410 Carolina Beach Road
Wilmington, North Carolina 28412

RE: OCR Complaint Nos. 11-16-1045,
11-17-1166, & 11-18-1056
Resolution Letter

Dear Dr. Burns:

This letter is to advise you of the outcome of three complaints filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against New Hanover County Public Schools (the District). The complaints, filed by the parent (Complainant) of a female former student (Student A) at XXXXX (School 1), allege that the District discriminated against Student A based on sex and retaliated against the Complainant. Specifically, the complaints allege:

Complaint 11-16-1045, filed November 3, 2015

1. The District failed to provide a prompt and equitable response when the Complainant notified it on XXXXX that Student A had been sexually assaulted by a male student (Student B) who XXXXX; and
2. The District retaliated against the Complainant for XXXXX complaint by XXXXX on or about XXXXX and XXXXX (School 2) resulting in XXXXX.

Complaint 11-17-1166, filed January 3, 2017

The District retaliated because the Complainant XXXXX when, on XXXXX, School 2 XXXXX in front of other people.

Complaint 11-18-1056, filed November 5, 2017

The District retaliated against the Complainant XXXXX when: (a) XXXXX; and (b) the District XXXXX.

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

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., 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 from the Department. Because the District receives Federal financial assistance from the Department, the Department has jurisdiction over it pursuant to Title IX.

During the investigation of the complaints, OCR reviewed information provided by the Complainant and the District; interviewed the Complainant and District personnel; and listened to audio and video recordings provided by the Complainant. Before OCR completed its investigation, the District expressed a willingness to resolve the complaints pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation of the complaints to date.

Factual Findings To Date

At all relevant times, the Complainant worked as a XXXXX.

In XXXXX, the Complainant reported to School 1 administrators that Student A was sexually assaulted by Student B XXXXX. The principal of School 1 (Principal 1) interviewed Student B, XXXXX. The Complainant asserted, and a contemporaneous email from the District potentially confirms, that multiple times from XXXXX, the Complainant reported that XXXXX, but School 1 did not put in place a plan XXXXX.

Student B XXXXX, and the District XXXXX. On XXXXX, Student B's XXXXX. The Complainant went to School 1 on XXXXX to complain about XXXXX.

After Student B's XXXXX. On XXXXX, the Complainant went to School 2 and XXXXX. Principal 2 informed OCR that the Complainant, XXXXX.¹ Later that day, the District's XXXXX, who informed OCR that he had XXXXX, called XXXXX and XXXXX. The XXXXX the Complainant in connection with the incident. On November 3, 2015, the Complainant filed OCR Complaint No. 11-16-1045, alleging discrimination against Student A and retaliation.

The Complainant continued to XXXXX. On XXXXX, the Complainant, XXXXX. The following day, Principal 2 reported to XXXXX. The AS XXXXX on or about XXXXX and reported XXXXX. According to the Complainant's records reviewed by OCR, XXXXX concerning the incident, but subsequently determined that the allegation was XXXXX. The Complainant filed OCR Complaint No. 11-17-1166 two weeks later, on January 3, 2017.

The AS also XXXXX. At the XXXXX, the Complainant XXXXX. Concerned that the Complainant XXXXX, the Assistant Coach XXXXX. After XXXXX informed the Complainant

¹ In a contemporaneous email concerning the incident from Principal 2 to the Assistant Superintendent, Principal 2 did not XXXXX.

that he was XXXXX the Complainant XXXXX. Approximately one week later, after the Coach XXXXX. The AS also provided a statement from XXXXX subsequently initiated XXXXX.

The AS informed OCR that he did not XXXXX because he XXXXX. The District further asserts that XXXXX.

The District cites its internal Board Policy XXXXX, which governs XXXXX. While a number of individuals have been XXXXX from District XXXXX under the Policy, the District informed OCR that the District had never XXXXX.

The Complainant twice asked the District to XXXXX one or more of the XXXXX currently XXXXX. In response to the Complainant’s first request, made in 2017, the District XXXXX instead responding that the complaint was XXXXX and the District would XXXXX. When the Complainant XXXXX with the District on October 4, 2019, the District XXXXX. However, according to the District, XXXXX.”²

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: “Except as provided elsewhere in this part, 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 Federal financial assistance.” The Title IX regulation, at 34 C.F.R. § 106.71, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Title IX or who files a complaint, testifies, assists, or participates in a proceeding under Title IX.

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.8(b). An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms.

Sexual harassment is a form of sex discrimination prohibited by Title IX. 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.

Under Title IX, a school has a responsibility to respond promptly and effectively to notice of sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures

² XXXXX, significant developments have impacted the District’s XXXXX. OCR is also aware that XXXXX. OCR reviewed publicly available information related to those developments, and, where appropriate and in light of the overlap with XXXXX, sought relevant information from the District concerning its activities.

prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of class schedules, escorts between classes, restrictions on contact between the parties, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

A school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

Analysis

OCR has concerns that the District may have failed to provide a prompt and effective response consistent with its Title IX responsibilities. When informed by the Complainant that Student A had been sexually assaulted by Student B, and XXXXX it appears that the District did not conduct interviews with Student A or other individuals at School 1 who may have witnessed these XXXXX to determine how often they were occurring; what, if any, interaction between Student A and Student B occurred; and the impact of the encounters on Student A at School 1. The District did not interview the students to assess the need for interim measures or put any interim measures in place.³ It also appears that School 1 did not put in place XXXXX.

OCR also has concerns about how the District responded to allegations of possible retaliation. The Complainant gave the District notice about actions by XXXXX. Documentation produced by the District suggests that XXXXX actions led to XXXXX, but it appears that School 1 did not respond to the Complainant's concerns. Similarly, on more than one occasion when the Complainant alerted the District to alleged XXXXX, the District appears not to have provided a prompt response and also appears to have failed to investigate the Complainant's allegations to conclusion.

Conclusion

On June 17, 2020, the District signed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will address the allegations investigated. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the District to review XXXXX, provide Title IX training to administrators, ensure that its policies include a procedure by which the District XXXXX, and complete an investigation of the

³ According to the District, Student A's XXXXX that Student A was not XXXXX.

Complainant's XXXXX. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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. A 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 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 OCR attorney XXXXX.

Sincerely,

O/B/O David Hensel
Team Leader
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Deborah Stagner, Esq.