



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

February 21, 2020

Mr. Chris Watson
Executive Director
Arapahoe Charter School
9005 Highway 306S
Arapahoe, North Carolina 28510

RE: OCR Complaint No. 11-18-1428
Resolution Letter/Letter of Findings

Dear Mr. Watson:

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 July 23, 2018 against Arapahoe Charter School (the School). The Complainant alleges that the School discriminated against XXXX (Student A) on the basis of sex when: (1) it failed to respond promptly and equitably to the Complainant XXXX that XXXX sexually assaulted Student A XXXX; and (2) XXXX throughout the XXXX school year.

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 School receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

During the investigation, OCR reviewed documents provided by the Complainant and the School and interviewed the Complainant and School faculty/staff. Before OCR completed its investigation of Allegation 1, on January 21, 2020, the School expressed a willingness to resolve that allegation by agreement 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. Below is a summary of the evidence obtained by OCR during the investigation to date concerning Allegation 1.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 2. OCR's findings and conclusions with respect to Allegation 2 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.

Legal Standard

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 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). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR will evaluate a recipient’s good faith efforts under the circumstances. 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 prior to or during the investigation of a complaint, which are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct.

In cases where an employee is engaged in sexual harassment of a student, a school may be held responsible under Title IX regardless of whether it knew or should have known about the harassment. Specifically, if an employee, in the context of carrying out his or her day-to-day job responsibilities for providing aid, benefits or services to students, engages in harassment that denies or limits a student’s ability to participate in or benefit from the school’s program, the school is responsible for discrimination, whether or not it knew or should have known about it. The school is therefore also responsible for equitably remedying any effects of the harassment on the students, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has “notice” of the harassment.

Allegation 1 - The School discriminated against Student A on the basis of sex when it failed to respond promptly and equitably to the Complainant XXXX reports that XXXX sexually assaulted Student A XXXX.

During the 2017-2018 school year, Student A was enrolled in the XXXX at the School. XXXX. The Complainant alleges that XXXX. According to the Complainant, XXXX.

OCR determined that on XXXX, the Complainant emailed the School’s Administrative Director (the Director), stating, “XXXX.” In response to the Director’s request that the Complainant identify XXXX so the School could investigate, the Complainant emailed a photograph of a group of individuals and identified XXXX. XXXX. According to the Complainant, the School never investigated or responded to her again.

OCR notes that the Complainant’s description of the alleged assault to OCR does not accord with her XXXX email to the Director, and further conflicts with the Complainant’s allegations XXXX. Furthermore, the Complainant alleges that Students A and B went to the Nurse to report the assault and the Nurse changed Student A’s clothes, but the Nurse’s log provided to OCR reflects no visit from either student. Additionally, on XXXX, in response to the OCR Complaint, the School requested XXXX. Based on the above, OCR could not corroborate the Complainant’s allegation.

However, concerning the School’s response to the Complainant’s XXXX allegation of sexual assault, OCR has a concern that the School may have failed to take appropriate steps to investigate after the Complainant separately initiated a law enforcement investigation, and additionally may have not appropriately documented its investigation. Particularly, in its narrative response to this Complaint, the School stated that the allegation was investigated by the Director, but once the Complainant initiated a law enforcement investigation, the School suspended its internal investigation. Additionally, the Director informed OCR that he did not continue the School’s investigation. While School Counsel subsequently informed OCR that the School did in fact conduct an investigation of the Complainant’s report parallel to the law enforcement investigation, the evidentiary record does not contain appropriate documentation of it.

Accordingly, on February 13, 2020, the School signed the enclosed Resolution Agreement which, when fully implemented, will address OCR’s concern with respect to Allegation 1. The provisions of the Agreement are aligned with Allegation 1 and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. The Agreement requires the School to: (1) make clear how it will discharge its obligations under Title IX when a parallel law enforcement investigation is pending; and (2) develop a written recordkeeping protocol for documenting sexual harassment complaints and investigations. Please review the enclosed Agreement for further details. OCR will monitor the School’s implementation of the Agreement until the School has fulfilled the terms of the Agreement.

Allegation 2 - The School discriminated against Student A on the basis of sex when XXXX throughout the XXXX school year.

The Complainant alleges that XXXX during the XXXX school year. The Complainant reported to OCR that she learned about the conduct from Student A XXXX and neither the Complainant nor Student A reported it to anyone.

OCR interviewed XXXX, who stated XXXX,¹ XXXX.

¹XXXX

OCR reviewed all XXXX. OCR also reviewed a XXXX email from the Complainant to the Director and another School employee, in which she complains that XXXX.

OCR could not find,² nor could the Complainant provide, any additional or verifiable evidence to support her allegation. OCR therefore cannot conclude by a preponderance of the evidence that the allegation occurred. Accordingly, OCR finds insufficient evidence to support Allegation 2 and will take no further action on it.

Conclusion

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

The Complainant has a right to appeal OCR's determination regarding Allegation 2 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the School. The School has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the School.

Please be advised that the School 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 School's cooperation in the resolution of this complaint. If you have any questions, please contact Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryn.Love@ed.gov.

² XXXX

Sincerely,

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

Enclosure

cc: Brian Gatchel, Esq. (via email)