



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

July 11, 2014

Richard Kroopnick, Esq.
Lusk and Albertson, PLC
40950 Woodward Avenue, Suite 350
Bloomfield Hills, Michigan 48304

Re: OCR Docket # 15-12-1314

Dear Mr. Kroopnick:

This letter is to inform you of the disposition of the above-referenced complaint that was filed against the Clarenceville School District (the District) on September 13, 2013. The complaint alleged that the District discriminated against a female student (the Student) on the basis of her sex. Specifically, the complaint alleged that, from March 2012 through the 2012-2013 school year, the Student was repeatedly harassed by her peers at school sexually and in retaliation for her having reported previous alleged sexual harassment from the fall of 2011, and, despite the Student's complaints to District staff, the District failed to respond.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. As a recipient of such financial assistance, the District is subject to this law. Therefore, OCR had jurisdiction over this complaint.

Based on the complaint allegations, OCR opened an investigation into the following legal issues:

1. whether the District failed to promptly and appropriately respond to alleged sexual harassment, resulting in a student, on the basis of sex, being excluded from participation in, being denied the benefits of, or being subjected to discrimination in any District programs or activities in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31; and
2. whether the District has adopted and published grievance procedures providing for the prompt and equitable resolution of student complaints of discrimination on the basis of sex as required by 34 C.F.R. § 106.8(b).

Prior to the completion of OCR's investigation, the District expressed interest in voluntarily resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (the *Manual*). The District submitted the enclosed resolution agreement (the Agreement), described below, to resolve the complaint.

Applicable Legal Standards

- **Sexual Harassment**

The Title IX regulation, 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.

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

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the recipient to take immediate action to eliminate the harassment, prevent its recurrence and address its effects. When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct. A recipient should not wait for the conclusion of a criminal investigation or criminal proceeding to conduct its own Title IX investigation, and if needed, must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution. Appropriate steps may include separating the accused harasser and the complainant, providing counseling for the complainant and/or harasser, and/or taking disciplinary action against the harasser.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed.

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair

the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct. In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student. For example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses. At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.

To comply with these regulatory requirements, recipients need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. The Title IX regulation, at 34 C.F.R. §106.8(a), specifically requires that a recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to it alleging noncompliance with Title IX (including allegations that the recipient failed to respond adequately to sexual harassment). This provision further requires that the recipient notify all its students and employees of the name (or title), e-mail and office address and telephone number of the employee (or employees) so designated. The recipient must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Further, the Title IX regulation, at 34 C.F.R. § 106.9, requires a recipient to notify all parties that it does not discriminate on the basis of sex in the educational program or activity that it operates and that it is required by Title IX not to discriminate in such a manner. The notice should further state that the requirement not to discriminate in the recipient's education program or activity extends to employees as well as students and that inquiries concerning the application of Title IX may be referred to the Title IX coordinator or employee designated pursuant to 34 C.F.R. §106.8(a).

- **Title IX Grievance Procedures**

The Title IX regulation, at 34 C.F.R. §106.8(b), requires a recipient to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by the regulation. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual violence complaints. A recipient may use student disciplinary or other separate procedures for these complaints. However, any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for: notice to students and employees of the procedures, including where complaints may be filed; application of the procedures to complaints alleging harassment carried out 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 the major stages of the complaint process; written notice to the parties of the outcome of the complaint and any appeal; and an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. Also, in order for a recipient's grievance procedures to be consistent with the Title IX evidentiary standard, the recipient must use a preponderance of the evidence standard. If a recipient provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

Voluntary Resolution and Conclusion

During its preliminary investigation, OCR interviewed the Student's mother, the Student, and several District witnesses. OCR also reviewed documents and information the Student's mother and the District provided. The information obtained to date in OCR's investigation indicates that the Student reported several incidents of alleged sexual harassment while attending the District's middle and high schools. The information also demonstrated that the District's Title IX grievance procedures and related policies and procedures are inconsistent with one another and raise other concerns, such as the lack of contact information for employees responsible for accepting and investigating complaints.

As noted above, before the conclusion of OCR's investigation, the District expressed interest in voluntarily resolving this complaint pursuant to Section 302 of the *Manual*. The *Manual* provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

Under the terms of the enclosed voluntary agreement, the District will:

- Send the Student's parent a letter containing an offer, should the Student choose to return to the District, to provide academic support, including tutoring, to address academic deficits and a District point of contact to whom the Student can report harassment or bullying.
- Revise its policies and procedures related to sex discrimination, including sexual harassment, to fully comply with Title IX.
- Adopt, implement, and publicize the revised policies and procedures.
- Train all District staff and all middle-school and high-school students on the revised policies and procedures.
- Conduct periodic climate assessments of the District middle school and high school to assess the effectiveness of the steps taken pursuant to the agreement.

In light of the signed agreement, OCR finds that this complaint is resolved, and OCR is closing the investigation as of the date of this letter. OCR will, however, monitor the District's implementation of this Agreement.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment. The complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation of District staff during the resolution of this complaint. OCR is committed to a high-quality resolution of every case. If you have questions about this letter, you may contact Traci Ext, Chief Attorney, by telephone at (216) 522-2671 or e-mail at Traci.Ext@ed.gov. For any questions about the implementation of the agreement, please contact Sacara Martin, who will be monitoring the District's implementation, at (216) 522-7640 or Sacara.Martin@ed.gov.

Sincerely,

Meena Morey Chandra
Acting Director

File Sign-Off

<u>Docket #</u>		
<u>Document Type</u> (Check all that apply)		<input type="checkbox"/> Letter of Acknowledgement <input type="checkbox"/> Letter of Notification <input type="checkbox"/> Dismissal/Admin Closure <input type="checkbox"/> Resolution Letter/Letter of Finding <input type="checkbox"/> Monitoring <input type="checkbox"/> Other: _____
<u>Position</u>	<u>Name</u>	<u>Date</u>