



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

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REGION XV  
MICHIGAN  
OHIO

June 9, 2016

John M. Stephen, Esq.  
Porter Wright Morris & Arthur LLP  
One South Main Street, Suite 1600  
Dayton, Ohio 45402

Re: OCR Docket #15-14-1205

Dear Mr. Stephen:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Dayton Regional STEM School (School) alleging that the School discriminated against a student (Student A) on the basis of sex. Specifically, the complaint alleged that the School subjected Student A to a sexually hostile environment by failing to respond appropriately to reports that he was being repeatedly sexually harassed by another student during the XXXX-XXXX school year. The complaint also alleged that the School failed to maintain and/or follow appropriate grievance procedures for the resolution of complaints of discrimination based on sex.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance. As a recipient of federal financial assistance from the Department, the School is subject to Title IX. Accordingly, OCR had jurisdiction to investigate the complaint.

Based on the complaint allegations, OCR investigated the following issues:

- whether the School, on the basis of sex, subjected a student to a hostile environment, i.e., sexual harassment that was sufficiently severe, pervasive, or persistent so as to interfere with or limit the student from participation in, deny the student the benefit of, or otherwise subject the student to discrimination under any program or service of the School in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31; and

- whether the School failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of student complaints of discrimination on the basis of sex in violation of the Title IX implementing regulation at 34 C.F.R. § 106.8(b).

During its investigation, OCR interviewed Student A and his parents, interviewed School employees, and reviewed documentation submitted by the parties. OCR also provided Student A's parents with the opportunity to respond to information provided by the School. After a careful review of the relevant information, OCR has determined that the evidence is insufficient to support that the School subjected Student A to a sexually hostile environment during the XXXX-XXXX school year, but that the evidence is sufficient to support a finding that the School was not in compliance with the Title IX regulation when it failed to inform Student A and his parents of the outcome of its investigation into a complaint of sex discrimination made in XXXXX XXXX. OCR also found that the School's grievance procedures were not in compliance with the requirements of the Title IX regulation. The School has signed the enclosed Resolution Agreement, which, once implemented, will address the compliance issues OCR identified. We set forth below the bases for OCR's determination.

### **Applicable Legal Standards**

The Title IX implementing 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance.

Sexual harassment is a form of sex discrimination prohibited by Title IX. Hostile environment sexual harassment is unwelcome conduct of a sexual nature that is sufficiently serious that it denies or limits a student's ability to participate in or receive the benefits, services, or opportunities of a school's program. Sexual harassment can include a variety of conduct, including unwelcome sexual advances or spreading sexual rumors. Title IX protects both male and female students from sexual harassment.

The regulations implementing Title IX of the Education Amendments of 1972, at 34 C.F.R. §§ 106.8 and 106.31, also require recipients of Federal financial assistance to provide prompt and equitable responses to sexual harassment complaints, reports, and/or other incidents of which it has notice (knew about or should have known about). A school that knows, or should know about possible sexual harassment, is responsible for taking prompt action to eliminate a hostile environment, and prevent the recurrence of harassment.

Additionally, the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- (1) notice to students and employees of the procedure, including where complaints may be filed;
- (2) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and the respondent to present witnesses and other evidence;
- (4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- (5) written notice to both parties of the outcome of the complaint; and
- (6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct any discriminatory effects on the grievant and others, if appropriate.

A grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities. The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated. While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sex discrimination complaints to ensure consistent practices and standards in handling complaints. Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sex discrimination and are able to explain how the school's grievance procedure operates.

### **Summary of OCR's Investigation**

The School is a public science, technology, engineering, and mathematics (STEM) school chartered by Wright State University, and is located in Dayton, Ohio. The School opened in 2009 and currently has approximately 540 students attending grades six through twelve. The student body is approximately 54.4% male and 45.6% female. Student A began attending the School during the XXXX-XXXX school year, when he was in the XXXXX grade. At the time the complaint was filed (XXXX-XXXX school year), Student A was in the XXXXX grade.

X---14 paragraphs redacted---X

The School submitted to OCR portions of its bylaws and policies and administrative guidelines in effect at the time period at issue in this complaint. Specifically, the School submitted Bylaw & Policy 5517 - Anti-Harassment (Policy 5517); Administrative Guideline 5517 – Anti-

Harassment (Administrative Guideline 5517); Administrative Guideline 5517.01 – Bullying and Other Forms of Aggressive Behavior (Administrative Guideline 5517.01); and its 2013-2014 student handbook and code of conduct (the Student Handbook). As indicated above, Policy 5517 was one policy that the compliance officer referenced in his April 8, 2014, letter to Student A's parents. The School did not submit to OCR its Bylaws & Policies 9130 and 2260 that the compliance officer also referenced in his April 8, 2014, letter.

During OCR's investigation, the School indicated that it was in the process of revising its anti-harassment policies and procedures. As of December 4, 2015, an updated version of Policy 5517 appeared on the District's website. However, the same version of Administrative Guideline 5517 that the School submitted to OCR during the investigation was still posted to the website as of February 2016.

Upon review, OCR noted that the submitted bylaws and policies contained outdated or incorrect information, such as the name and contact information for the compliance officer. The School's documents are also inconsistent as to the School's procedure for addressing complaints, including to whom complaints should be made.

For example, the "Harassment, Intimidation and Bullying" section of the Student Handbook stated, in relevant part, that harassment should be reported to a counselor, teacher, or administrator. It also stated that complaints would be investigated according to board policy, and references Policy 2260.

OCR obtained a copy of Policy 2260 – Nondiscrimination and Access to Equal Educational Opportunity from the School's website. This document stated that the board has designated two individuals to serve as the District's "Compliance Officers," also known as "Civil Rights Coordinators." Neither of the persons listed was the School's current compliance officer. Policy 2260 indicated that Policy 5517.01 applies to bullying outside of that constituting unlawful discrimination based on a protected class. Policy 2260 included a complaint procedure through which students can make complaints of, among other types of discrimination, sex discrimination. This complaint procedure indicated with whom complaints may be filed, and timeframes for the major stages of the complaint process. It indicated that the investigation would include consideration of documentation or other information presented by the parties and interviews with the parties and other relevant witnesses. The procedure called for written notice to be issued to the parties of the outcome of the investigation. The procedure stated that if the Compliance Officers determined that unlawful discrimination occurred they would identify corrective action to stop, remedy, and prevent the recurrence of the discrimination.

Administrative Guideline 5517 also included a complaint procedure, through which members of the "School community," stated to include students, employees, and other individuals subject to the control and supervision of the board, as well as third parties, can make complaints of sexual harassment, although complaints of sexual harassment also seem to be covered by Policy 2260, described above. Administrative Guideline 5517 named a completely different person as the "Complaint Coordinator." It also contained procedures somewhat different from those set forth in Policy 2260. Several School staff incorrectly identified the School's compliance officer to OCR during this investigation.

Administrative Guideline 5517 provided a telephone number for the Complaint Coordinator which was the School's general telephone number, but provided the address for a campus of a community college apparently unrelated to the School. Administrative Guideline 5517 included an informal resolution procedure that, although voluntary, did not include provision for the complainant to be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Administrative Guideline 5517 did set forth timeframes for the major stages of the complaint process, although the timeframe set for the informal resolution process was stated to be optional. This procedure did not clearly provide both parties the opportunity to identify other forms of evidence besides witnesses. The procedure provided for written notice of the outcome of the investigation to be issued to the parties. However, the guideline did not state that the School would provide written notice to either party of the outcome of any appeal to the board for the appeal procedure set forth in the document. Policy 5517, which also described a complaint procedure for harassment complaints, did provide for written notice of appeal decisions to be issued to the parties.

Administrative Guideline 5517 and Policy 5517 did not include assurance that the School will take steps to prevent recurrence of any sex harassment found to have occurred, and to correct any discriminatory effects on the grievant and others, if appropriate, other than discussion of possible discipline of the harasser.

With respect to Policy 9130, which the School's compliance officer told Student A's parents would apply to their complaint in his April 2014 letter, OCR obtained a copy of Policy 9130 from the School's website. This policy sets forth a general public complaint process different from the School's discrimination grievance procedures described above.

The compliance officer told OCR that neither he nor the School's board did anything further regarding the individual sexual harassment allegations Student A's parents made to him during the XXXXX XXXX meeting, except that he said the School's board assured itself that Students A and B were not in the same classes. There is no dispute that the School never issued any written notice to Student A's parents regarding the outcome of any investigation the School had conducted.

### **Analysis**

Regarding the alleged failure to respond to sexual harassment of Student A, though the School was aware of previous issues between Students A and B, the only alleged harassing conduct relevant and timely in the instant case that was reported to the School was the XXXXX XXXX rumor. The evidence obtained during OCR's investigation supports that the rumor was first reported to the School by Student B when she reported it to the School's XXXXX XXXXX. After the XXXXX XXXXX informed the assistant principal, she promptly investigated the rumor. The assistant principal interviewed everyone that she was told had knowledge about the rumor on the same day and she came to a supportable conclusion that it was unclear who started rumor. She also investigated whether there was any truth to the rumor and determined that nothing had occurred between Students A and B XX XXX XXXXX XXXXXXXXX.

Additionally, the information that Student A's parents and the School submitted to OCR supports that the rumor spread for a limited time among a relatively small number of students.

After learning of the rumor and speaking with Student A's parents, the School made efforts to keep Student A and Student B separated after XXXXX XXXX, although there were times when the Students were scheduled to be in the same classroom and staff actively sought to keep them from interacting. During the XXXX-XXXX school year, the School successfully continued to keep the Students separated.

Based on the foregoing, OCR concludes there is insufficient evidence to support a finding that the School violated the Title IX implementing regulation at 34 C.F.R. § 106.31 by failing to respond to sexual harassment of which it had notice against Student A, as alleged. Related to the School's alleged failure to maintain and/or follow appropriate grievance procedures, OCR found that, at the time the complaint was filed, the School maintained several different grievance procedures that purported to cover complaints of sex discrimination, yet offered different processes. Portions of the procedures were also located in several different, overlapping, documents, and the person to whom sexual harassment should be reported was not listed or was inaccurate. Further, OCR found that School officials, including the compliance officer to whom Student A's parents were referred to make a complaint, were untrained in the School's procedures and on how to identify possible claims of sex discrimination.

Finally, with regard to following appropriate procedures, OCR found that the School failed to provide a prompt and equitable resolution of the XXXX complaints that Student A's parents made to School staff and the School's compliance officer regarding harassment of Student A. Specifically, although the School did conduct an investigation related to Student A's parents' complaints regarding Student B, the School did not provide the parents with a written report of the outcome of its investigation as required by Title IX.

Based on the foregoing, OCR concludes that the School is not in compliance with the Title IX regulation at 34 C.F.R. § 106.8(b) because it had not adopted and published grievance procedures providing for prompt and equitable resolution of Title IX complaints and the School failed to notify Student A's parents of the outcome of the School's investigation into their complaint of sex discrimination made on behalf of Student A.

### **Resolution and Conclusion**

To resolve the compliance findings identified above, the School submitted the enclosed agreement on May 23, 2016. Under terms of the agreement, the School will issue written notice of the outcome of Student A's parents' sex discrimination complaint to the parties; revise its sex discrimination grievance procedures and relevant policies to ensure they are prompt and equitable and consistent, and publish and conduct training related to the OCR-approved revised policies and procedures.

In light of the signed agreement, OCR finds that the allegations are resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the School's

implementation of the agreement. Should the School fail to fully implement the agreement, OCR will take appropriate action to ensure the School’.

Please be advised that the School 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 individual may file another complaint alleging such treatment.

This concludes OCR’s investigation of the complaint and 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.

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

The complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate the cooperation of the School during the investigation and resolution of this complaint. If you have any questions about this letter or OCR’s resolution of this case, you may contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

We appreciate you forwarding the School’s first monitoring report to the attention of Suwan Park, who will be monitoring the School’s implementation of the agreement. Ms. Park can be reached at (216) 522-4972 or by e-mail at [Suwan.Park@ed.gov](mailto:Suwan.Park@ed.gov).

Sincerely,

/s/

Emily Babb  
Acting Director

Enclosure