



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

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REGION XV  
MICHIGAN  
OHIO

August 1, 2017

Jessica M. Stark, Esq.  
Kluczynski, Girtz, & Vogelzang  
5005 Cascade Road SE, Suite A  
Grand Rapids, Michigan 49546

Re: OCR Docket No. 15-15-1408

Dear Ms. Stark:

This letter is to notify you of the disposition of the above-referenced complaint filed on September 14, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Lakeshore Public Schools (the District) alleging that the District discriminated against a student (the Student) based on sex and disability. Specifically, the complaint alleged that from March 2015 to October 2015:

1. The District failed to address incidents of sexual harassment against the Student, of which it was aware, including xxxxxxxxxxxxxxxx in the girls' restroom at Lakeshore Middle School; xxxxxxxxxx xxxxxxxx name-calling and taunts toward the Student by other students at school; and xxxxxxxxxxxxxxxxxxxx regarding the Student by another parent, which were then circulated by students at school.
2. The District failed to evaluate the Student, whom the District was aware has diagnoses of xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxx, for a suspected disability.

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, which prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of such financial assistance and as a public entity, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

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

1. Whether the District failed to promptly and appropriately respond to alleged sexual harassment about which it knew or reasonably should have known, 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 District education programs or activities in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31.
2. Whether the District failed to provide prompt and equitable resolution of student complaints alleging sex discrimination, in violation of the Title IX implementing regulation at 34 C.F.R. § 106.8(b).
3. Whether the District failed to conduct an evaluation of a student who, because of disability, needs or is believed to need special education or related services, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35.

During its investigation, OCR interviewed the Complainant and several District employees and reviewed information and documentation from the Complainant and the District. Based on a review of the information provided, OCR has concluded that: (1) there was a hostile environment for the Student, based on sex, to which the District did not effectively respond; (2) the District failed to implement its Title IX grievance procedures; (3) the District failed to timely evaluate the Student for suspected disability; and (4) the District failed to provide the Student with a free appropriate public education (FAPE). The District submitted the enclosed resolution agreement, described below, to resolve this complaint. The bases for OCR's determination are set forth below.

### **Alleged Sexual Harassment**

- **Summary of OCR's Investigation**

[X--- paragraphs redacted---X]

OCR reviewed the District's discrimination grievance procedure, Board Policy 2260, which designates the middle school principal (the District's Title IX Coordinator) and the assistant superintendent as its compliance officers charged with responding to complaints under the procedure. The procedure as written applies to complaints alleging sex-based harassment carried out by employees, other students, or third parties, calls for a formal investigation by a compliance officer or designee, requires the investigator to provide a written report at the conclusion of the investigation to the superintendent, and requires the superintendent to issue written notice of the outcome of the complaint to the parties. The procedure further requires that, if the superintendent determines the complainant was subjected to unlawful discrimination, the superintendent is to identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination. The procedure states that the superintendent's decision is final.

During OCR's investigation, District witnesses provided conflicting information regarding how the District handles Title IX investigations. According to the District's Title IX Coordinator, he

is to handle all concerns and investigations on behalf of the District, and all reports are to be forwarded to him for review. He explained to OCR that, in this role, he meets with the complainant and shares the District Title IX policies. Once his investigation concludes (usually within three to five days), he reports the outcome to the complainant. He also forwards a written outcome to the complainant (or parent of student at issue) and a copy is retained in the District's central office.

Contrary to the information provided by the Title IX Coordinator, the District's high school principal and assistant principal both told OCR that the high school assistant principal is the individual who conducts such investigations, unless the complainant decides to go to the Title IX Coordinator directly. The high school principal explained that he could hear an appeal of the outcome of the assistant principal's investigation, and said that the District documents only those reports that are substantiated or where there was discipline. He said that the Title IX Coordinator would handle documentation issues, but also that there was no requirement that he or the assistant principal report matters to the Title IX Coordinator. Likewise, the middle school assistant principal reported that she is the one to conduct all investigations for the middle school, and only refers the matter to the Title IX Coordinator if there are consequences for the perpetrator.

The District reported to OCR that all District administrators had sexual harassment training on August 28, 2015.

OCR also reviewed the 2015-2016 handbooks for both the middle and high school as they related to the District's Title IX policies and procedures. The high school's handbook included a section regarding harassment that included a process for the investigation/resolution of harassment complaints that differed from that of Policy 2260 discussed above. For example, in the handbook process, it appeared that any staff member who received a report of harassment must investigate and, only if the complainant is unsatisfied with the result of that effort, may the complainant go to the building administrator. The administrator then had the opportunity to take some unspecified action. If the complainant was still unsatisfied, the complainant could submit a written complaint to the principal or his designee. The principal was then to inform the accused party, meet with parties involved, propose a solution, and provide written notice of outcome to the parties. There was a final appeal step to the principal. There was no reference in this section to the existence of additional District policies on the matter or the compliance coordinators. The middle school handbook contained a short section on "sexual discrimination and harassment." It directed such concerns be reported to the building principal. It further warned that a "substantiated charge" would subject the student to disciplinary action. There was no information on the District policies, Title IX Coordinator, or more specific process of investigating/resolving reports.

- **Applicable Legal Standards, Analysis, and Conclusion**

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 or education program or activity operated by a recipient that receives Federal financial assistance. Sexual harassment (unwelcome conduct of a sexual

nature) of a student that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex is a form of sex discrimination prohibited by Title IX. OCR considers the conduct from both a subjective and objective perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances. Relevant factors include the following: the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject or subjects of the harassment; the size of the school, location of the incidents, and context in which they occurred; other incidents at the school; and incidents of gender-based, but nonsexual harassment.

A school has a responsibility under Title IX to respond promptly and effectively to sexual harassment. If a student sexually harasses another student and the school knows or reasonably should know about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. If, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex. In that case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

The Title IX regulation, at 34 C.F.R. §§ 106.8(a) and (b), also requires a recipient to designate at least one employee to coordinate its efforts to comply with Title IX and to 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. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: notice of the procedure, including where complaints may be filed; application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant 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 district must also make sure that all designated employees have adequate training as to what conduct constitutes sex discrimination, including sexual harassment, and are able to explain how the grievance procedure operates.

With respect to whether a hostile environment based on sex existed toward the Student in this case under 34 C.F.R. § 106.31, OCR corroborated that the District was aware of several incidents of possible sexual harassment against the Student, specifically:

[X---paragraph redacted---]

However, the information obtained during OCR's investigation showed that the District responded appropriately only with respect to the xxxxxxxxxxxxxxx incident. In that case, the District promptly investigated and remedied the issue, and provided written notice of outcome to Complainant. The Complainant told OCR she was satisfied with the resolution.

[X--- paragraph redacted]

Accordingly, OCR finds that the xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx created a hostile environment based on sex for the Student to which the District failed to effectively respond.

In considering whether the District violated 34 C.F.R. §§ 106.8(a) and (b), OCR noted several problems with the District's handling of the Student's and Complainant's reports. First, as previously noted, the District failed to provide a complete response to the xxxxxxxxxxxxxxxxx incidents. Second, although the District's grievance procedures as written contained each of the "prompt and equitable" elements described above, the evidence in this case shows that these procedures were not followed in connection of the District's handling of the xxxxxxxxxxxx xxxxxxxxx incidents. For example, the procedures call for the middle school principal, who also serves as the Title IX Coordinator, or the assistant superintendent to conduct (or assign someone to conduct) investigations into Title IX complaints and prepare a final report of the investigation. Further, the procedures state the superintendent will issue a final decision to the parties, and, if the superintendent determines the complainant was subjected to unlawful discrimination, identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination. Here, the evidence shows that the Title IX Coordinator played a very limited role, if any, in addressing the Student's concerns. He never, for example, undertook or oversaw an investigation of the matters, as described in the District's written policies; rather, the middle school assistant principal took the lead in investigation for the xxxxxxxxxxxx xxxxxxxxx incidents and the high school assistant principal started an investigation of the xxxxxxxxxxxxxxxxx incident. No final report was prepared by anyone or provided to the Student's family. Finally, after the incidents, and after all District administrators reported having had Title IX training, administrators interviewed by OCR in this case had differing understandings of when a matter implicates Title IX, who is supposed to investigate Title IX matters, how/when they are to be documented, and when, if ever, the Title IX Coordinator is to become involved. As noted above, OCR also found that the District's handbooks during the 2015-2016 school year were inconsistent with District policies regarding the handling of Title IX complaints. Likely due to this confusion, the District's practices in investigating Title IX allegations were not consistent across school buildings and misaligned to the District's policies and procedures.

Based on the evidence obtained, OCR has determined that, although the District's written Title IX grievance procedures provide for prompt and equitable resolution of complaints, the District failed to implement them and failed to provide a prompt and equitable resolution of the complaints made on behalf of the Student and the Title IX Coordinator did not coordinate the District's efforts to comply with Title IX with respect to the reports of alleged sex discrimination at issue in this complaint, in violation of the Title IX regulation at 34 C.F.R. §§ 106.8(a) and (b).

## **Alleged Disability Discrimination**

- **Summary of OCR's Investigation**

[X--- paragraphs redacted---X]

The District maintains policies and an extensive Section 504 manual related to the rights of students with disabilities under Section 504. In general, the policies and the manual contain appropriate and legally accurate information regarding the manner in which students with disabilities should be identified, evaluated, and placed. For example, they include prohibitions on discrimination on the basis of disability, and a specific and appropriate process for parents or staff to request evaluation of “a student who, because of a suspected disability, is believed to need services under Section 504.”

However, OCR also noted the following areas of concern with respect to the District's Section 504 policies and manual:

- Policy 2260 (Nondiscrimination and Access to Equal Educational Opportunity) contains incorrect standards for when individuals with disabilities may utilize service animals on school properties and what types of information regarding a service animal these individuals will have to show the District.
- Policy 2260.01A (Section 504/ADA Prohibition Against Discrimination Based on Disability) states that an Intervention Assistance Team (IAT) shall convene within 60 days, but does not specify the starting point of the 60 days; the written list of related aids/services that can be provided for a student with a disability does not include special education; and, although reevaluation is mentioned, it does not include an explicit statement that this should occur as conditions warrant and prior to exclusionary discipline of more than 10 days.
- Section 504 Manual for Identifying and Serving Eligible Students: Policies, Guidelines and Forms lacks appropriate Section 504 Coordinator information and uses outdated contact information for OCR.

- **Applicable Legal Standards, Analysis and Conclusion**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires that a recipient that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. In relevant part, the Section 504 regulation defines person with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities. Major life activities include, but are not limited to: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, or communicating; or the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder,

neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. For purposes of FAPE, the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are based upon adherence to procedures that satisfy the specific procedural requirements set forth in the Section 504 regulation at 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient school district to evaluate any student who, because of disability, needs or is believed to need special education or related services. Recipient school districts must establish standards and procedures for the evaluation and placement of such students. 34 C.F.R. § 104.35(b). A recipient school district must ensure that qualified persons with disabilities are evaluated and provided access to meaningful educational services without unreasonable delay pursuant to 34 C.F.R. §§ 104.33 and 104.35.

In addition, under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives Section 504 FAPE services and who is the target of bullying continues to receive FAPE—an obligation that exists regardless of why the student is being bullied. As part of a school's appropriate response to bullying on any basis, the school should convene the Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.

In this case, the evidence shows that at least by the beginning in the fall of 2014 the District knew that the Student struggled both academically and xxxxxxxx xxxxxxxxxxxx xxxxxxxx. The District also acknowledged that an outside provider informed it of the Student's xxxxxxxxxxxx xxxxxx xxxxxxxxxxxx, which, among other things, contributed to the Student's xxxxxxxxxxxx. OCR further found credible information from the Complainant that she had informed the school of the Student's xxxxxxxxxxxx xxxx xxxxxxxxxxxxxxxxxx. This information, taken in combination, should have raised the District's reasonable suspicion that the Student may have a disability under Section 504. However, it did not. The evidence shows that the District violated the Section 504 regulation, at 34 C.F.R. § 104.35(a), when it failed to evaluate the Student determine whether the Student was a student with a disability and, if so, what placement and services she required, until xxxxxxxxxxxxxxxxxx xxxxxxxxxxxx.

OCR has further determined that the District maintains both policies and an extensive Section 504 manual related to the rights of students with disabilities under Section 504, as required by 34 C.F.R. § 104.35(b). However, OCR also noted the above-identified problems with the District's policies and manual, such as concerns with the time used for the IAT process before a student is evaluated.

[X--- paragraph redacted---X].

The evidence obtained did not indicate the Student's Section 504 team reconvened to determine whether the Student's Section 504 plan was appropriately addressing her individual needs. The Student's Section 504 plan as written indicated that certain aids and services would be discretionary to staff or inconsistent across classes. In addition, the District provided OCR with no information in this case to suggest that the Student's Section 504 team, once it existed, considered the Student's allegations of sexual harassment—described above—for their impact on her ability to receive FAPE. Therefore, based on the information obtained, OCR has concluded that the District denied the Student a FAPE in violation of the Section 504 regulation at 34 C.F.R. § 104.33.

### **Resolution and Conclusion**

On July 24, 2017, the District signed the enclosed resolution agreement that, once implemented, will fully address OCR's findings in accordance with Title IX, Section 504 and Title II. Under the terms of the enclosed agreement, the District will complete its investigations into the incidents of sexual harassment reported by the Student on xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx. It will issue written notice of outcome to the Student's family. To the extent that sexual harassment occurred, the District will take steps to stop the harassment, prevent further harassment, and remedy any discriminatory effects on the Student. The District will further convene the Student's Section 504 team to determine what compensatory education or other remedial services the Student requires for the time period from xxxxxxxxxxx xxx xxxxxxxxxxxxxxxx, in which the District had reason to believe the Student was a student with a disability under Section 504. The team will also consider what effect, if any, alleged sexual harassment against the Student from xxxxxxxxxxxxxxx xx xxxxxxxxxxxxxxxx had on her ability to obtain a FAPE. The team will develop a written plan for necessary compensatory education. Should the Student re-enroll in the District, the team will make appropriate revisions to the Student Section 504 plan. Finally, the District will make changes to its sexual harassment and disability-related policies, procedures, and manuals, and train staff accordingly.

This concludes OCR's investigation of the complaint and 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.

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 individual may file another complaint alleging such treatment.

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, OCR 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.

OCR appreciates the District's cooperation during the investigation of this complaint. For questions regarding this letter, please contact xxxxxxxxxxxx, Supervisory Attorney/Team Leader at (216) xxx-xxxx. We look forward to receiving the District's first monitoring report, which was due under the agreement on July 31, 2017. Please address your monitoring report to OCR attorney xxxxxxxxxxxx xxxxxxxxxxxx, who will be monitoring the District's implementation of this agreement. XXXXXXXXXXX XXXXXXXXXXX can be reached by telephone at (216) xxx-xxxx, or by e-mail at xxxxxxxxxxxx.xxxxxxxxxx@ed.gov.

Sincerely,

/s/

Meena Morey Chandra  
Regional Director

Enclosure