



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

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REGION XV
MICHIGAN
OHIO

January 5, 2018

Kristen M. Howard, Esq.
Special Assistant to the Superintendent and
Executive Director of Compliance
Detroit Public Schools Community District
3011 West Grand Blvd., 14th Floor
Detroit, Michigan 48202

Re: OCR Docket #15-16-1041

Dear Ms. Howard:

This letter is to notify you of the disposition of the complaint filed on November 4, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Detroit Public Schools. Responsibility for this matter was assumed by Detroit Public Schools Community District (the District). The complaint alleged that the District failed to promptly and equitably respond to a complaint made on behalf of a student with disabilities (the Student) of sexual violence against the Student occurring on September 23, 2015, and, as a result, the Student was subjected to a sexually hostile environment. Because the Student did not return to school after September 23, 2015, until early 2016, the complaint further alleged that the District denied the Student a free appropriate public education (FAPE).

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 prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 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 Federal financial assistance from the Department and as a public entity the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

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

- Whether the District provided a prompt and equitable response to a student complaint of sex discrimination, as required by the Title IX implementing regulation at 34 C.F.R. § 106.8(b).
- Whether the District, on the basis of sex, subjected a student to a sexually hostile environment, i.e., sexual harassment that was sufficiently severe, pervasive, or persistent so as to interfere with or limit a student from participation in, deny a student the benefit of, or otherwise subject a student to discrimination under any program or service of the District in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31.
- Whether the District denied a qualified student with a disability a free appropriate public education, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.33.

During OCR's investigation to date, OCR interviewed the Student's parent (the Parent) and reviewed information provided by the Parent and the District. Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint pursuant to Section 302 of OCR's *Complaint Processing Manual* (the *Manual*) and signed the enclosed resolution agreement (the *Agreement*), which, once implemented, will fully address the allegations raised in this complaint. We set forth below a summary of OCR's investigation to date, the applicable regulatory requirements, and the District's voluntary resolution.

- **Background**

As of the 2017-2018 school year, the District operates 100 schools, enrolling approximately 44,400 students.

At the beginning of the 2015-2016 school year, the Student was five years old and attended kindergarten at a District elementary school/middle school (the School). The School serves students from pre-K through eighth grade. The Student was identified by the District as a student with a disability and received special education placement and services pursuant to an Individualized Education Program (IEP). The Parent stated that the Student has severe asthma, attention deficit hyperactivity disorder, a speech impairment, and cognitive delay.

The Parent stated that, as of September 2015, the Student was placed in a self-contained classroom with approximately eight kindergarten students with disabilities. The Student had a 1-on-1 aide. The Parent stated that the Student received transportation services to and from school as part of his IEP.

Summary of OCR's Investigation to Date

- **Information Provided by the Parent**

The Parent explained that the District subcontracts its transportation services to a private transportation company, which provided the Student door-to-door transportation. It was the Parent's understanding that the bus driver was employed by the transportation company. At the beginning of the 2015-2016 school year, the Student's bus route included some older students with disabilities who attended the School. The Parent stated that the school day ended at approximately 2:15 p.m. and the Student always arrived home before 3:00 p.m. The Parent typically watched for him from her living room window. There was no other adult on the bus except the driver.

The Parent stated that on September 23, 2015, the bus arrived after 3:00 p.m. The Parent was very concerned and had called the transportation company but the line was busy. When the bus arrived, the Student, along with the driver, exited the bus. The driver walked the Student to the porch. The Parent had come out onto the porch to meet them. The Parent said the Student was covered in a substance from "head to toe" that she believed was semen. The Parent also said the Student had bruises about his face, scratches, a black eye, and bite marks and looked disheveled. The Parent asked the driver what had happened to the Student and the driver told the Parent that the Student and some other students on the bus were "sucking wee-wees" and that the driver "[would not] report him this time." The driver did not provide any additional information, and then drove off. The Parent went into the house, called the District's transportation department, and explained to the person who answered the phone what the driver had said about the Student on the bus. The Parent then took the Student to a local hospital emergency room for an examination. The Parent said hospital staff alerted the Detroit Police Department. City police detectives interviewed the Parent.

The Parent stated that the next morning, on September 24, 2015, she went to the School to discuss the incident. The Parent said that, when she arrived, the detectives were also there. The School principal met with the Parent and a detective in the office conference room. The Parent told the principal that the Student would not be back to school and he told her to "take all the time" the Student needed. The Parent said she then stopped in the Student's classroom and spoke with his special education teacher about the situation. There was no mention of reconvening the Student's IEP team to address his educational needs.

The Parent stated that after September 24, 2015, the District did not contact her to discuss this incident or to discuss the Student's return to school, and that a number of District administrators, from the School principal to the superintendent, had not returned her subsequent phone calls. The only investigation the Parent indicated she was aware of was by city police detectives. She stated the Student started to have nightmares and did not go back to school for some time. At some point during the 2015-2016 school year the Student returned to a different District elementary school. The District provided

transportation for both the Student and the Parent via taxi service. During the 2016-2017 school year, the Student began attending a third District elementary school.

The only notice the Parent received of any investigation about the September 2015 incident was a contact from the city police department, which advised they found the bus driver did not sexually assault the Student, but rather two other students on the bus did. The police department closed its case. The Parent stated that the District had never offered any assistance or services for the Student, and that he continued to be timid around large groups of children, did not want to be around boys, did not sleep well, and had nightmares.

- **Information Provided by the District**

The District provided OCR with limited documentation in response to OCR's data requests. The documentation included the Student's attendance records, which confirmed his last day at the School was September 23, 2015. The District also provided OCR with a copy of the Student's February 6, 2015, IEP confirming he received special education placement and services and that transportation was provided by the District as a related service. The District also provided a copy of a contract dated July 1, 2015, between the District and the transportation company to provide transportation services to District students through 2018. The District provided the name of the bus driver who drove the Student's bus and a list of students who also rode the bus during the relevant time period. The District provided a copy of the Detroit Police Department's crime report dated September 23, 2015, confirming the information provided to OCR by the Parent regarding her understanding of the incident on the bus. The District also provided a copy of a statement from the Student's special education teacher dated October 19, 2015, confirming that, on September 24, 2015, she received a call from the School's principal about the Student and the September 23, 2015, incident on the bus, and that later that same day the Parent and a relative came into the classroom to pick up the Student's classwork and indicated that he would be absent for a while, but they did not provide a return date. The Parent also explained to the teacher her understanding regarding what happened on the bus involving the Student.

The District provided emails between the District's transportation staff and a transportation company employee dated September 23, 2015, regarding the Parent's allegation that the Student was sexually assaulted on the bus and the bus driver's account of the incident. In the email exchange, the transportation company employee stated that the bus driver was told by a student that the Student and another student on his bus were engaging in oral sex at the School while waiting for the bus. The bus driver said he did not witness the students engage in oral sex but he separated them. Upon dropping off each student the driver said he explained the situation to the students' parents and the parents indicated that they would "handle the situation." The bus driver did not report the incident to the transportation company or the District until after the District contacted the transportation company about the incident.

There was also an email from the School principal dated September 25, 2015, regarding the incident, describing the Parent as very upset and keeping the Student at home. The email also stated that the camera on the bus was inoperable and that the School would follow up with the Parent and the Student in a few days. Based on other emails, it appeared that this email and the emails from the transportation company were copied to the District's communication director and enrollment director. The District also provided a September 24, 2015, Incident Report from the driver confirming the information he provided to the transportation company employee; specifically, that he was told by a student that the Student and another student were engaged in oral sex while waiting to load the bus, that he separated the students but did not see any evidence of sexual activity, that the students' pants were pulled up and zipped, and that when he dropped off the two students he informed the parents of the incident.

According to the records provided by the District, the Student's scheduled drop-off time in fall 2015 was 3:07 p.m., and the Parent contacted the School to report what she had been told by the bus driver at 3:17 p.m. on the day of the incident.

The District acknowledged that it did not contact the Parent for several months after the incident, and that the Student did not return to school until sometime in early 2016. Although the District stated it contacted the Parent on December 16, 2015, the District's documentation indicates it contacted the Parent on January 19, 2016, regarding his return to school and transportation. The District's Title IX coordinator at the time of the bus incident and as of January 2016 acknowledged that there was no documentation to determine if the alleged sexual assault of the Student was investigated by District. Instead, the District maintained that the incident was reported and being investigated by the police and the police would not share any investigative information with the District despite the fact that the District's police department and the city's police department have a memorandum of understanding (MOU) in place providing for the city police and the District's police department to establish reasonable communications and coordination between the two entities.

During OCR's investigation, the District's Title IX coordinator from the relevant time period asserted to OCR that the incident with the Student was a "criminal matter" or a "sex crime" and therefore a matter to be handled by police.

To date, the District has provided no documentation or indication that the District ever investigated or provided any response to the Parent's report of sexual assault of the Student.

By letter to OCR dated September 28, 2017, the District asserted that the bus driver had been cleared of any involvement in the incident and "because the other student involved in the sexual misconduct was a 5-year-old boy, the case was closed." The District provided no documentation supporting those assertions.

The District confirmed to OCR that at no point did the District convene an IEP team regarding how the Student would receive his educational services during his absence

from school following the September 2015 incident or whether his placement continued to be appropriate or whether he needed compensatory education services or other services concerning any denial of FAPE and/or to remedy any sexually hostile environment and its effects on him.

With respect to the District's process in general for responding to alleged sexual harassment, OCR requested the names and titles of any District and School personnel responsible for investigating incidents of discrimination and harassment based on sex or implementing any part of the District's Title IX grievance process. In its March 2016 response, the District provided no names. Instead, the District stated that

[t]hose responsible for investigations depends on the origination and nature of the incident. For example, if an incident of a non-violent nature occurs in a school, the principal is responsible for initiating an investigation. Other school district entities responsible for investigation would include the Office of Employee Relations, Office of General Counsel, and [the District's] Police Department.

OCR also requested a copy of all documentation concerning any formal or informal complaints or reports of sexual assault/harassment made to the District or received by the District during the 2013-2014, 2014-2015, and 2015-2016 school years. In response, the District provided some documents from its Office of Employee Relations concerning seven employees. The documents indicated a focus by the District on whether or not an individual employee should be disciplined, and did not indicate the District investigated or sought to address any resulting sexually hostile environment for students or otherwise remedy sexual harassment found to have occurred. The documents also did not indicate any notice to the individuals reporting sexual harassment of the outcome of the District's investigations. The District also submitted charts indicating that during the requested time period there had been 233 "student involvements" in incidents of sexual harassment, and 45 "student involvements" in "criminal sexual conduct." The District provided no additional documents providing any detail about any of these incidents or showing any response to any of the incidents by the District.

The District acknowledged that it did not have Title IX grievance procedures in place at any time during this investigation, and to date the District has not indicated or provided any documentation showing it has adopted and implemented Title IX grievance procedures. However, the District has indicated to OCR that its compliance office has since been designated to investigate more recent Title IX complaints received by the District, and at one point provided a copy of a draft Title IX grievance procedure it was in the process of creating.

Prior to the conclusion of the investigation, the District requested to voluntarily resolve this matter.

Applicable Regulatory Requirements

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 (for example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student); 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 single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.

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.

With respect to peer sexual harassment of a student, a school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. For the purposes of compliance with the Title IX regulation, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."

Sexual harassment of a student by a teacher or other school employee can also be discrimination in violation of Title IX. Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment (generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students), and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment.

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits the student's ability to participate in or benefit from the education program. In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the

situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.

It may be appropriate for a school to take interim measures during the investigation of a complaint. 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. Interim measures should be individualized and appropriate based on the information gathered by the Title IX coordinator, making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

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. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed.

In addition to the legal standards explained above, the regulation implementing Title IX, at 34 C.F.R. § 106.9, contains detailed requirements that specify the information that must be included in a recipient's notice of nondiscrimination; it requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary academic institution students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in any educational program or activity which it operates and that it is required by Title IX and its implementing regulation at 34 C.F.R. Part 106 not to discriminate in such a manner.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), also requires recipient institutions to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX (a Title IX coordinator), including investigation of any complaint communicated to the recipient institution alleging any action which would be prohibited by that regulation. That regulation provision also requires a recipient institution to notify all its students and employees of the Title IX coordinator's contact information (name, address(s), and telephone number).

The Title IX regulation, at 34 C.F.R. § 106.8(b), also requires a recipient 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.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the person's disability. For a student with a disability, a recipient's failure to address a sexually hostile environment can also lead to a denial of FAPE.

Voluntary Resolution Prior to Conclusion of OCR's Investigation

In order to complete its investigation of this complaint, OCR would need to ascertain whether the District has any additional relevant documents it has not yet produced and pursue action to require the District to provide OCR with access to those records; obtain additional relevant documents from the Parent and conduct an additional interview with the Parent; and conduct interviews of District witnesses, including but not limited to the District's current Title IX coordinator, previous Title IX coordinator, special education personnel, the School principal, transportation personnel, police officers, and the former bus driver. However, as noted above, prior to the completion of the complaint investigation, the District expressed interest in resolving this complaint under 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.

On December 28, 2017, OCR received the enclosed Agreement which, when fully implemented, will resolve the complaint. The terms of the agreement are aligned with the allegations and issues investigated and are consistent with the applicable law and regulations. Specifically, the Agreement requires the District to: designate a Title IX coordinator; develop a notice of nondiscrimination and Title IX grievance procedures; develop and conduct relevant Title IX training for its staff; develop a system to document Title IX complaints, including complaints alleging sexual assault and sexual violence; examine its implementation of the current MOU with the Detroit Police Department to determine if it is being properly implemented and review whether the current MOU should be revised or modified; ensure the District's Title IX coordinator is monitoring the effectiveness of the District's overall Title IX anti-discrimination efforts; offer to provide the Student with counseling at District expense; reimburse the Parent for any out-of-pocket expenses incurred for counseling the Student received to date; convene the Student's IEP team to determine the type and amount of compensatory educational and remedial services the Student will receive for the loss of services incurred from September 24, 2015, until the Student resumed regular attendance at the District; and conduct an investigation and provide resolution for any sexually hostile climate that resulted from the September 23, 2015, incident.

Conclusion

In light of the signed Agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will reopen the complaint and take further appropriate action to ensure compliance with Title IX, Section 504, and Title II.

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 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 harmed individual may file another complaint alleging such treatment.

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

We appreciate your cooperation and that of the District during the preliminary investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, please contact Mr. Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634. For questions about implementation of the Agreement, please contact Ms. Timsi Pathak, who will be monitoring the District's implementation of the Agreement, at Timsi.Pathak@ed.gov or at (216) 522-7642. We look forward to receiving the District's first monitoring report by January 26, 2018.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure