



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

February 25, 2022

**Via E-mail Only to [redacted]**

Jessica K. Philemond, Esq.  
Scott Scriven LLP  
250 East Broad Street, Suite 900  
Columbus, Ohio 43215

Re: OCR Docket No. 15-18-1010

Dear Ms. Philemond:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 6, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Pleasant Local Schools (the District). The complaint alleged that, during the 2017-2018 school year, the District discriminated based on sex by failing to maintain procedures that provide for the prompt and equitable resolution of Title IX complaints.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department of Education. As a recipient of federal financial assistance from the Department the District is subject to Title IX.

Based on the complaint allegation, OCR investigated the following legal issue: whether the District failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints of sexual harassment, in violation of the former Title IX implementing regulation at 34 C.F.R. § 106.8(b).

To conduct its investigation, OCR reviewed information provided by the Complainant, information and documents provided by the District, and viewed information on the District's website. OCR also interviewed the Complainant and relevant District witnesses. After carefully considering all of the information obtained during the investigation, OCR found that the District violated Title IX, as alleged. OCR determined that the District failed to adopt and publish appropriate Title IX grievance procedures that provide for the prompt and equitable resolution of Title IX complaints. The bases for OCR's determination are explained below. To address the concerns OCR identified, the District has entered into a voluntary resolution agreement pursuant to Section 303(b) of OCR's *Case Processing Manual*.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

[www.ed.gov](http://www.ed.gov)

## Summary of OCR's Investigation

[paragraph redacted]

[paragraph redacted]

During the investigation, OCR staff reviewed the District's policies and its website to determine if the District was in compliance with the Title IX regulation in effect prior to August 14, 2020. OCR's review showed several compliance concerns. For example, the District identified ten policies that it said were in effect during the 2017-2018 school year that addressed discrimination and harassment based on sex, but OCR's review showed that they were not completely consistent with each other, and they overlapped in coverage of sexual harassment complaints. The procedures were also not appropriately tailored to the actual administration at the District, as they stated that the compliance officer was responsible for completing the investigation and providing a written report to the superintendent, who then was responsible for a separate layer of review, but the superintendent was the compliance officer. Furthermore, the District's student handbook had a completely different complaint process than the policies and procedures.

OCR staff also viewed the District's webpage in August 2021 in light of the amended Title IX regulation that went into effect on August 14, 2020 (2020 regulation). As of August 2021, the District's homepage stated that it was under construction, that it was a new site, that the District was still working to add content, and that the public should check back frequently for updates. If one hovered over "District" on the homepage, one of the options was "Title IX." Clicking on Title IX brought you to a Title IX page with the name, title, telephone number, mailing address and e-mail address of the District's Title IX Coordinator. There was also a Resources section with links to a public notice and trainings. In addition, there was a sentence stating, "To read the full board policy" and containing a link. Clicking on the link brought you to a page with administrative guideline 2260, titled "Nondiscrimination and Access to Equal Educational Opportunity" that had an active status and said that it was last revised on December 1, 2014. This was the District's administrative guideline, and not the policy; as the link to this document on the District's website stated that it was a link to the "full board policy," this link to the administrative guideline was confusing to a member of the general public.

The District had provided OCR with Policy 2260 during the investigation, and OCR reviewed Policy 2260 to determine if it complies with the 2020 regulation; OCR's review showed that it did not comply. For example, the Policy does not provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness, in violation of 34 C.F.R. § 106.45(b)(1)(ii). The Policy also does not state that any individual designated as a Title IX Coordinator, investigator, decision-maker, or facilitator of an informal resolution process should not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, in violation of 34 C.F.R. § 106.45(b)(1)(iii). The Policy does not state that respondents should be presumed innocent until a determination of responsibility is made, in violation of 34 C.F.R. § 106.45(b)(1)(iv). The Policy does not include an appeals process, in violation of 34 C.F.R. § 106.45(b)(viii). The Policy also does not describe the range of supportive measures available to complainants and respondents, in violation of 34

C.F.R. § 106.45(b)(ix). Finally, the Policy does not include a discussion of privileges, in violation of 34 C.F.R. § 106.45(b)(x).

### **Applicable Legal Standards**

OCR used both the prior and the current Title IX regulation in analyzing whether or not the District adopted and published an appropriate Title IX grievance procedure.<sup>1</sup> Unless specifically noted otherwise, citations in this section are to the prior regulation, and the legal standards discussed below were in effect during the 2017-2018 school year.

The regulation implementing Title IX 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. The "education program or activity" of a school includes all of the school's operations. This means that Title IX protects students in connection with all of the academic, educational, extracurricular, athletic, and other programs of the school, whether they take place in the facilities of the recipient school, on a school bus, at a class or training program sponsored by the recipient school at another location, or elsewhere. Sexual harassment that creates a hostile environment based on sex is unwelcome conduct of a sexual nature that is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex.

Pursuant to Title IX, if a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know about the harassment, schools have an obligation to take immediate and effective steps reasonably calculated to end any harassment of which they have notice, eliminate a hostile environment if one has been created, and prevent harassment from occurring again by remedying its effects on the complainant and others as appropriate. 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. As long as the school, upon notice of the

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<sup>1</sup> Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, OCR evaluated your complaint based on the prior Title IX regulation that was in effect at the time when the alleged acts occurred. You can find that regulation [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, 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 such case, the school is responsible for taking effective actions to stop the harassment, prevent its occurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

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.

The Title IX regulation requires recipients 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. The amended Title IX regulation effective August 14, 2020, sets forth ten requirements that a recipient's Title IX grievance procedures and grievance process must follow to show that its grievance process incorporates due process principles, treats all parties fairly, and reaches reliable determinations. The regulation also sets forth certain basic requirements for a recipient's grievance process, including notice of allegations, investigations, determinations regarding responsibility, appeals, and recordkeeping.

OCR enforces the requirements of Title IX consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment. Thus, for example, in addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish sex discrimination under the statutes enforced by OCR.

## **Analysis and Conclusion**

The evidence showed that during the relevant timeframe, the District had adopted Title IX grievance procedures in its policies and procedures and its student handbook, but they were not consistent with each other, and they overlapped in coverage of sexual harassment complaints. In addition, OCR's August 2021 review of the District's Title IX webpage showed that it contained a link to a District Title IX administrative guideline published in 2014, and not the District's policy. OCR's review of the District's policy showed that the policy did not comply with the current Title IX regulation. Accordingly, OCR found that the District has failed to adopt procedures that provide for the prompt and equitable resolution of Title IX complaints, as alleged.

On February 24, 2022, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address OCR's non-compliance finding. OCR will monitor the implementation of the Resolution Agreement.

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 looks forward to receiving the District's first monitoring report by May 25, 2022. For questions about implementation of the resolution agreement, please contact OCR attorney Suwan Park, who will be monitoring the District's implementation. Ms. Park can be reached by e-mail at [Suwan.Park@ed.gov](mailto:Suwan.Park@ed.gov).

For questions about this letter, please contact me by e-mail at [John.Cohen@ed.gov](mailto:John.Cohen@ed.gov) or by telephone at (216) 522-4709.

Sincerely,

/s/

**John Cohen**  
Supervisory Attorney/Team Leader

Enclosure