

Katherine E. Sipala  
Superintendent  
Narragansett School District  
25 5th Ave  
Narragansett, RI 02882

Re: Complaint No. 01-15-1269  
Narragansett School District

Dear Superintendent Sipala:

This letter is to notify you of the determination by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Narragansett School District (District). The Complainant, on behalf of her son (Student), alleged that the District discriminated against the Student on the basis of his disability and sex. Specifically, the Complainant alleged that the District failed to appropriately respond to her complaints that the Student was being subjected to a hostile environment due to sexual harassment and bullying based on his disability during the spring and fall of 2015. As explained below, prior to OCR completing its investigation, the District requested to resolve the complaint by entering into the enclosed voluntary resolution agreement (Agreement).

OCR accepted this complaint for investigation pursuant to our authority under Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Finally, OCR is responsible for enforcing Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex. The District is subject to the requirements of Section 504 and Title IX because it is a recipient of Federal financial assistance from the U.S. Department of Education; and it is subject to the requirements of Title II because it is a public entity operating a higher education program. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504, Title II, and Title IX.

OCR investigated the following legal issue:

Whether the District discriminated against the Student, on the basis of his disability and sex, by failing to appropriately respond to complaints of disability- and sex-based harassment, in violation of the regulations implementing Section 504 at 34 C.F.R. §§ 104.4(a) and (b)(1)(i)-(iv), 104.7(a)-(b); 106.8, 106.9(a); Title II at 28 C.F.R. §§ 35.106, 35.107, and 35.130; and Title IX at 34 C.F.R. §§ 106.8, 106.9(a) and 106.31(a)-(b).

## **Summary of Preliminary Investigation**

During the course of OCR’s investigation, OCR interviewed the Complainant and District staff, including the District Social Worker, District Special Education Director, School Psychologist, School Principal, and Special Education Teacher. OCR also reviewed documentation provided by the Complainant and District, including the District’s Bullying/Cyberbullying Policy/Procedures, Complaint Resolution Procedure (grievance procedure applicable to Section 504, and Title IX, among other bases), and Statement of Nondiscrimination and Affirmative Action (applicable to Section 504 and Title IX, among other bases), and copies of the Student’s Individualized Education Program (IEP) for the 2014-2015 and 2015-2016 school years. OCR made the following determinations.

### *Behavioral Incidents*

The Student was involved in four incidents in 2015 related to potential bullying/cyberbullying and harassment. In January, another student (Student 2) sent the Student two social media messages saying “XXXXX XX.” In March, the Student was involved in a physical altercation with a different student (Student 3) and was suspended for a half-day. In May, the Student and Student 2 engaged in a physical altercation. Finally, in November, the Student’s classroom teacher discovered a possibly threatening entry in the Student’s notebook concerning other students (who were not from any of the District’s schools).

The District handled all four incidents differently. According to one District staff member, the District did not investigate the January incident because the District did not learn about the incident until the May incident was investigated; there was no subsequent investigation of the prior event. As for the March incident, the District provided OCR an incident report, but did not provide documentation or explain how the March 2015 incident was investigated. In contrast, the District did provide documentation of its investigation of the May incident, and the risk assessment following the November incident (discussed below).

### *The May Incident*

According to the District, the Student and Student 2 engaged in a physical altercation in May 2015. During its investigation the District learned that prior to the altercation, Student 2 created a fake social media account and told the Student to send a XXXX XXXXXXXXXXXX of himself to it by perpetuating a ruse that the account owner was a female. The District Social Worker interviewed the Student, Student 2, and two additional classmates. According to the District’s investigative report, the School concluded that there was no evidence suggesting that the Student was targeted due to his gender or disability, or that he was discriminated against in a manner prohibited under Title IX or Section 504. The report indicates that the School was persuaded by the fact that it could not verify that a picture was actually sent or existed, and that the Student’s classmates and teachers did not confirm the allegation that Student 2 had teased the Student regarding his disability. However, the report does state that Student 2 was found to have bullied the Student in violation of the District’s Bullying/Cyberbullying Policy/Procedures.

To address the incident, the School implemented a safety plan for the Student and a conduct plan for Student 2. The Student's IEP team also convened a meeting to determine whether there was a denial of a Free Appropriate Public Education (FAPE) to the Student, and made changes to the Student's IEP to address his needs. Specifically, although the IEP team did not find that the bullying incident resulted in a denial of a FAPE, the Student's counseling goals were increased.

### *The November Incident*

On November 10, 2015, the Student's classroom teacher discovered his notebook entry, which had a threatening title and identified specific individuals by name. The School Psychologist explained that although the incident was initially referred for investigation, the circumstances warranted a risk assessment by a clinical psychologist. On November 12, 2015, the High School Psychologist, a clinical psychologist, performed the risk assessment and determined that the Student did not present an imminent concern to others. No further investigation was initiated.

## **Legal Standards**

### *Disability-Based Harassment*

The regulation implementing Section 504 at 34 C.F.R. Section 104.4(a) provides that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. The Title II regulation contains a similar provision regarding public entities at 28 C.F.R. Section 35.130(a). Disability harassment prohibited by Section 504 and Title II is intimidation or abusive behavior towards a student based on their disability, which creates a hostile environment by interfering with or denying a student's participation in or benefit from the programs or activities of any entity covered by these regulations.

Bullying of a student on the basis of his disability may result in disability-based harassment in violation of Section 504 and Title II. Once a school district knows or should know of potential disability-based bullying, it is responsible for taking immediate and appropriate action to investigate or otherwise determine what occurred. In other words, a school district may violate Section 504, Title II and the regulations if: (1) a student is bullied based on a disability; (2) the bullying is sufficiently serious to create a hostile environment – i.e., deny or limit the student's ability to participate in or benefit from the educational program; (3) the school knew or should have known about the harassment; and (4) the school did not respond appropriately.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it must take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser

where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

For the student with a disability receiving a FAPE pursuant to the Individuals with Disabilities Education Act (IDEA), a school should also determine whether the student's receipt of appropriate services was affected by the bullying. Even if the school finds that the bullying did not create a hostile environment or constitute harassment, the obligation remains the same. Accordingly, the school should convene the IEP team to determine whether the student's needs have changed such that the IEP is no longer designed to provide a meaningful educational benefit. Under such circumstances, the IEP team must: (1) determine the extent to which additional or different FAPE services are needed; (2) ensure that any needed changes are made promptly; and (3) safeguard against putting the onus on the student with the disability to avoid or handle the bullying. In addition, when considering a change of placement, schools must continue to ensure that FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

When taking steps to separate an alleged target of harassment from the alleged perpetrator during and subsequent to an investigation, a recipient should minimize the burden on the alleged victim, and thus should not, as a matter of course, remove the alleged victim from his or her classes while allowing the alleged perpetrator to remain. A recipient may also be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student. In addition to counseling and taking disciplinary action against the harasser(s), effective corrective action may require changes to the recipient's overall services or policies.

### *Sex-Based Harassment*

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 which receives Federal financial assistance. Specific obligations are set forth at 34 C.F.R. §106.31(b), including a recipient's obligation to ensure that its students are not denied or limited in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex.

Harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or receive benefits, services, or opportunities in the school's program. Title IX prohibits discrimination resulting from harassment that is sexual in nature and/or gender-based harassment. Sexual harassment is unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

As with incidents of disability-based harassment under Section 504, recipients must be responsive in a timely and effective way to instances of possible sexual harassment. A recipient may be found in noncompliance with Title IX and its implementing regulation as a result of

sexual harassment if the recipient knew, or had reason to know, of the harassment and failed to respond adequately. The recipient will be considered to have responded adequately to knowledge of harassment if it has conducted a thorough and objective investigation and has taken immediate effective action to fully remedy any harm that may have occurred and to prevent sexual harassment from occurring in the future. If sexual harassment is found, the recipient must take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment.

*Designation of Section 504 and Title IX Coordinator(s)*

The regulation implementing Section 504, at 34 C.F.R. § 104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. The regulation implementing Title II, at 28 C.F.R. § 35.107(a), contains a similar requirement in the instance of a public entity that employs 50 or more persons.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that recipients designate at least one employee to coordinate compliance with the regulation, including coordination of investigations of complaints alleging noncompliance, and to notify all students and employees of the name or title, office address, and telephone number of the designated employee or employees. OCR has also determined that an adequate notification includes providing the email address of the designated Coordinator.

*Notice of Nondiscrimination Pursuant to Section 504 and Title IX*

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), also requires each recipient to take appropriate steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability; and, that this notice should also include the identity of its designated coordinator(s). The regulation implementing Section 504, at 34 C.F.R. § 104.8(b), requires recipients to publish this notice in any recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees. The regulation implementing Title II, at 28 C.F.R. § 35.106, contains similar requirements.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, employees, 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 the education programs or activities it operates; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form which it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

*Grievance Procedures under Section 504 and Title IX*

The regulation implementing Section 504, at 34 C.F.R. § 104.7, requires recipients to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment. The regulation implementing Title II incorporates the same requirements.

The Title IX regulation, at 34 C.F.R. §106.8 (b), requires recipients to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex. To comply with Title IX's regulatory requirements, a recipient's sex discrimination grievance procedures must apply to complaints of sex discrimination in the recipient's education programs and activities filed by students against employees, other students, or third parties. While Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, a recipient's grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination and harassment under Section 504 and/or Title IX. These include:

- 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, including the opportunity to present witnesses and other evidence;
- 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 recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

**Resolution**

Prior to OCR completing its investigation and making any findings, the District requested to engage in a voluntary resolution pursuant to Section 302 of OCR's Case Processing Manual, and agreed to take steps to address the Complainant's allegations and comply with the above-stated standards. The steps are also responsive to initial concerns identified by OCR during its investigation regarding the need for the District to timely and effectively respond to notice of possible sexual or disability-based harassment; publicize the identity and contact information for responsible officials (i.e., the District's Title 504 and Title IX Coordinators); and remedy any deficiencies in its investigation(s) or response to incidents involving the Student. Specifically and pursuant to the Agreement, the District will: (1) Establish policies and procedures to provide for the prompt and equitable resolution of complaints alleging all forms of discrimination based on sex or disability; (2) Revise its Notice of Nondiscrimination to include the name and/or title,

office address, email address, and telephone number of the person(s) designated to coordinate its efforts to comply with the requirements of Section 504 and Title IX and their implementing regulations; (3) Complete a supplemental investigation of all incidents of bullying of the Student, based on disability and/or sex; and (4) Train Section 504 and Title IX coordinator(s), and all District officials and administrators directly involved in processing, investigating, and/or resolving complaints of discrimination based on disability and/or sex.

### **Conclusion**

OCR has determined that the Agreement is aligned with the allegation and is consistent with the laws and regulations OCR enforces. Accordingly, OCR is closing its investigation as of the date of this letter, and will monitor the District's implementation of the Agreement, and will notify the parties in writing of the monitoring closure, once it determines that the District has fulfilled the terms of the Agreement.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding the District's compliance with the regulations implementing Section 504/Title II and Title IX, or other laws enforced by OCR that may exist but are not discussed here. The Complainant may have the right to file a private law suit in federal court, whether or not OCR finds a violation.

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 Complainant 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 privacy.

OCR thanks the District for its assistance in resolving this matter. If you have any questions regarding this letter and/or OCR's investigative process, please feel free to contact Civil Rights Attorney Abra Francois at (617) 289-0142 or by email at [Abra.Francois@ed.gov](mailto:Abra.Francois@ed.gov). Please refer to the complaint number noted above (01-15-1269) in any future telephone or written contact with OCR.

Sincerely,

Diane M. Henson  
Regional Director

Enclosure

cc: David Kane  
Barton Gilman LLP