



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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May 8, 2015

IN RESPONSE, PLEASE REFER TO: 03-12-1170

Mr. Sam A. Rotella, Jr.,
Substitute Superintendent
Southern Tioga School District
Boyanowski Administration Building
241 Main Street
Blossburg, PA 16912

Dear Mr. Rotella:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Southern Tioga School District (the District). Specifically, XXXXXX (the Complainant) alleged that the District discriminated against XXXXXX, XXXXXX (the Student), on the basis of his sex by:

1. XXXXXX; and,
2. XXXXXX.

The issues OCR investigated were whether the Student was subject to gender-based harassment, including harassment for nonconformity with gender stereotypes and, if so, whether the District failed to provide a prompt and equitable response to the harassment as required by law. OCR also investigated the District's Title IX grievance procedures.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to these laws.

During the investigation, OCR reviewed evidence including documents, records and correspondence provided by the Complainant and the District, and interviewed District staff, the Complainant, the Student, and student witnesses. Based on the evidence, OCR has determined that the District's grievance procedures and notice of nondiscrimination fail to comply with the requirements of Title IX. OCR also determined that the District failed to provide a prompt and equitable response to the Complainant's complaints XXXXXX. On May 1, 2015, the District signed a Resolution Agreement to address these compliance concerns.

LEGAL AUTHORITY

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. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping. Thus, harassment of a student for failing to conform to stereotypical notions of masculinity and femininity constitutes sex discrimination.

A recipient may be found in noncompliance with Title IX and its implementing regulation as a result of such 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.

In addition to the nondiscrimination provisions, 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. Further, the regulation, 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. Under 34 C.F.R. §106.9, a recipient must maintain a notice of nondiscrimination.

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.

In evaluating whether grievance procedures are prompt and equitable, OCR considers 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, 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 school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual harassment, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

- A statement of the school's jurisdiction over Title IX complaints;
- Adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- Reporting policies and protocols, including provisions for confidential reporting;
- Identification of the employee or employees responsible for evaluating requests for confidentiality;
- Notice that Title IX prohibits retaliation;
- Notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- Notice of available interim measures that may be taken to protect the student in an educational setting;
- The evidentiary standard that must be used (preponderance of the evidence, i.e., more likely than not that sexual harassment occurred) in resolving a complaint;
- Notice of potential remedies for students;
- Notice of potential sanctions against perpetrators; and
- Sources of counseling, advocacy and support.

1. XXXXXX

xxx – paragraphs redacted – xxx

LEGAL ANALYSIS

xxx – paragraphs redacted – xxx

2. **Reporting Process**

OCR reviewed the District's policies and procedures that were in effect during the 2011-2012 school year, as well as its most recent policies and procedures from the 2013-2014 school year,

to determine whether the District has a notice of nondiscrimination, and if so, whether it meets the requirements of Title IX.

Notice of Non-Discrimination

The District's 2011-2012 Rules and Regulations booklet contains a section entitled "Student Rights" which provides as follows:

***Nondiscrimination in the School and Classroom Practices:** The Board declares it to be the policy of this district to provide an equal opportunity for all students to achieve their maximum potential through the programs offered in these schools regardless of race, color, creed, religion, gender, sexual orientation, ancestry, national origin, marital status, pregnancy, or handicap/disability. This section also provides that the Superintendent is the District's Compliance Officer and is responsible for the following areas: curriculum and materials, training, student access, district support, and student evaluation.*

The District's 2013-2014 Rules and Regulations publication contains a "Notification of Non-Discrimination" that provides as follows:

Consistent with the Pennsylvania Human Relations Act, a student may not be denied access to a free and full public education, nor may a student be subject to disciplinary action on account of race, sex, color, religion, sexual orientation, national origin, or disability. For information regarding civil rights of grievance procedures, contact Keith D. Yarger, Superintendent, Southern Tioga School District, 241 Main Street, Blossburg, PA 16912, 570-638-2183.

The High School's 2013-2014 Student Handbook contains a section entitled "Affirmative Action" which provides in pertinent part:

***Purpose:** The Board declares it is to be the policy of this district to provide an equal opportunity for all children to achieve their maximum potential through the programs offered in these schools regardless of race, color, creed, religion, sex, ancestry, national origin, or special need.*

None of the above-referenced provisions identify the name or title, office address, and telephone number of the individual designated to coordinate compliance Title IX. In addition, none of the provisions expressly prohibit discriminated on the basis of sex, as required by Title IX.

Title IX Coordinator

The Superintendent informed OCR that he is the District’s Title IX Coordinator and that he has served as the Title IX Coordinator since he became the Superintendent in March 2011. None of the teachers or students interviewed as part of our investigation knew the identity of the District’s Title IX coordinator. Likewise, the Complainant did not know that the Superintendent is the District’s Title IX coordinator. The Superintendent explained that his role as Title IX Coordinator with respect to sex discrimination and sexual harassment include “working with the principal to see what is happening.” In addition, the Principal told OCR that he has not had any training regarding Title IX. Our investigation did not find any evidence that the District has published that the Superintendent is the Title IX Coordinator or the name or title, office address, and telephone number of Title IX Coordinator.

We note that Policy 248 provides that the Superintendent is designated as the “compliance officer.” Policy 248 states that the compliance officer’s duties include, but are not limited to, publishing and disseminating Policy 248 at least annually to students, parents/guardians/employees, and various third parties and decide appeals of harassment complaints. However, none of the compliance officer’s duties as set forth in Policy 248 are specific to Title IX or discrimination on the basis of sex. In addition, the 2013-2014 Rules and Regulations publication which prohibits discrimination, among other things, on the basis of sex, states: For information regarding civil rights or grievance procedures, contact [the Superintendent] and contains his title, office address, and phone number. However, this provision does not make clear that the Superintendent is the District’s Title IX coordinator. Moreover, neither the Superintendent’s description of his duties as the District’s Title IX Coordinator nor the duties of the District’s compliance officer meets Title IX’s requirements for a Title IX coordinator.

Title IX Grievance Procedures

The Complainant alleged that the District does not have well-publicized policies prohibiting sexual harassment or procedures for reporting and resolving sexual harassment complaints. She told OCR that she was not able to locate the policies and procedures on the District’s website or in the Student Handbook, and she was not aware of them until she requested them directly from the Superintendent. XXXXXX. XXXXXX. XXXXXX. XXXXXX.

xxx – paragraphs redacted – xxx

District Policy 248- Unlawful Harassment

The District provided OCR with a copy of its Unlawful Harassment Policy, Policy 248, which applies to harassment on the basis of race, color, national origin/ethnicity, gender, age, disability, sexual orientation, and religion. Policy 248 states that it prohibits harassment of students and third parties by all District students and staff members, contractors, vendors, volunteers, and third parties. It does not state that it applies to complaints brought by employees.

At the time of the complaint, Policy 248 was not available online or referenced in the District’s Rules and Regulations Booklet. While Policy 248 is now available online, it is located under a section entitled Board Policy, but it does not appear under a heading such as “sexual harassment” or discrimination.

Policy 248 provides a definition of sexual harassment, and also provides examples of conduct that may rise to the level of sexual harassment, but the examples do not include sexual assault or sexual violence.

Policy 248 states that, when the building principal or designee receives a complaint of unlawful harassment, (s)he shall inform the student or third party of the right to file a complaint and the complaint procedure, inform the complainant that that s/he may be accompanied by a parent/guardian during all steps of the complaint procedures, notify the complainant and the accused of the progress at all appropriate stages of the procedure and refer the complainant to the Compliance Officer if the building principal is the subject of the complaint.

Policy 248 also contains procedures for reporting and investigating complaints of sexual harassment, as well as appeal procedures. With respect to reporting, Policy 248 directs victims to immediately report the incident to the building principal or a District employee and advises employees who suspect or are notified that a student has been subjected to harassment to immediately report the incident to the building principal. Policy 248 also provides that complainants and reporting employees are encouraged to use the “report form” that is available from the building principal, but oral complaints shall be acceptable.

With respect to the investigation of harassment complaints, Policy 248 directs that upon receiving a complaint of sexual harassment, the building principal is to immediately notify the Compliance Officer who shall authorize the building principal to investigate the complaint. The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the incident and the investigator may also evaluate any other information and materials relevant to the investigation. The Dean of Students told OCR that, as a matter of practice, when there is a “he said she said situation,” he looks for witnesses and obtains statements. In addition, it states that an investigation by the police does not absolve the District of its obligation to investigate. Policy 248 does not provide that both parties may submit witnesses and evidence.

Policy 248 states that the building principal shall prepare a written report within 15 days, unless additional time to complete the investigation is required and the findings are to be provided to the victim and the accused. However, the policy does not specify that the findings are to be provided to the parties in writing. Policy 248 also states that if the finding is that the conduct constituted a violation, the District will take prompt corrective action to ensure that such conduct ceases and will not recur and that disciplinary action shall be consistent with the Student Code of Conduct, Board policies, District procedures, applicable collective bargaining agreements, and state and federal laws. Additionally, Policy 248 provides that: complainants may appeal the finding or the corrective action within 15 days; the Compliance Officer shall prepare a written response within 15 days; and copies of the appeal response will be provided to the complainant, the accused, and the building principal.

The District’s Rules and Regulations Handbook that was in effect in the 2011-2012 and 2012-2013 school years contained a section entitled “Parent/Student Complaint Process” which provides that parents and students have the right to request redress of complaints and that individual and group complaints should be recognized and appropriate appeal procedures provided. This provision further states that complaints are to be submitted according to the

guidelines provided by Board policy and that parents and students should first make the complaint known to the staff member most closely involved, or if none is identifiable, his/her guidance counselor and both shall attempt to resolve the issue informally and directly. The Rules and Regulations Handbook also contains a section entitled “Harassment/Bullying” which states that harassment/bullying, including harassment/bullying on the basis of gender, is prohibited and that “District administration will investigate complaints of harassment/bullying and will take appropriate action and/or discipline against any person who violates District policy.” Neither of the provisions directs the reader to Policy 248.

The District’s Rules and Regulations Handbook that was in effect during the 2013-2014 school year was amended to direct the reader to Policy 248 and contains a summary of Policy 248, but not the reporting or investigatory procedures, and does not reference the complaint form. The District also provided a copy of the High School’s 2013-2014 Student Handbook, which does not contain any reference to sexual harassment or Policy 248.

LEGAL ANALYSIS

OCR concludes that the District does not have adequate policies and procedures that provide for the prompt and equitable resolution of Title IX complaints. First, the District’s notice of non-discrimination does not comply with Title IX because it does not provide the contact information for the Title IX Coordinator and does not expressly prohibit discrimination on the basis of sex. With regard to the Title IX Coordinator, none of the teachers or students interviewed knew the identity of the District’s Title IX coordinator, and the evidence reflects that the Title IX Coordinator did not receive adequate Title IX training. Moreover, the District does not publish the contact information for its Title IX Coordinator on its website or publications.

While Policy 248 contains many of the components required by Title IX, it does not explicitly state that the investigation will be conducted in an adequate, reliable, and impartial manner or that the parties will have an equal opportunity to present witnesses and relevant evidence or contain a statement that the District will take steps to correct the discriminatory effects on the complainant and others, if appropriate. Further, Policy 248 is not widely published, it is not easy to locate on the District’s website, and it does not provide an equal appeals process (the appeals process applies only to the complainant).

CONCLUSION

OCR concludes, by a preponderance of the evidence, that the District’s grievance procedures and notice of nondiscrimination fail to comply with the requirements of Title IX. OCR also determined that the District failed to provide a prompt and equitable response to the Complainant’s complaints of gender-based harassment. Thus, OCR concluded that the District did not comply with the applicable Title IX regulations at 34 C.F.R §§ 106.8, 106.9, and 106.31.

RESOLUTION AGREEMENT

On May 1, 2015, the District provided OCR with the enclosed signed Resolution Agreement (the Agreement), which addresses the compliance concerns identified in OCR’s investigation and,

when fully implemented, will resolve the District's noncompliance with Title IX. In signing the Agreement, the District has agreed to:

- revise its Title IX grievance procedures and notice of non-discrimination;
- issue an Anti-Harassment Statement to all students, faculty and staff that will be posted in the High School;
- develop and provide training to the Title IX Coordinator and other District employees responsible for processing, investigating and/or resolving complaints of sex discrimination;
- ensure that Title IX training has been conducted for all District staff;
- develop an ongoing Title IX training program to provide to all District staff, faculty and personnel to recur on an annual basis;
- develop a plan to be implemented at the District's High School for educating students and parents about issues related to sexual and gender-based harassment;
- create and charge a focus group at each high school to identify strategies for ensuring that students understand their rights under Title IX;
- conduct annual climate checks with students to assess the effectiveness of the steps taken by the District pursuant to this Agreement; and use the gathered information to inform future proactive steps; and
- develop a centralized record-keeping process for documenting and tracking complaints of sexual harassment; and provide to OCR documentation of the District's responses and handling of all sex discrimination/harassment allegations reported during the previous calendar year.

OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter sets forth OCR's determination in an individual OCR case and should not be construed to address any other issue(s) regarding the District's compliance 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

OCR is committed to prompt and effective service. If you have any questions, please contact me at (215) 656-6935, or by email at beth.gellman-beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader
Philadelphia Office

Enclosure

cc: Robin B. Snyder, Esq.