



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

November 6, 2015

IN RESPONSE, PLEASE REFER TO: 03151060

Dr. Carol A. Williamson
Superintendent of Schools for Queen Anne's County
Queen Anne's County Public Schools
202 Chesterfield Avenue
Centreville, MD 21617

Dear Ms. Williamson:

This is to notify you of the determination made by the U.S. Department of Education (the Department), Office for Civil Rights (OCR), in the above-referenced complaint filed against the Queen Anne's County Public Schools (the District). The Complainant alleged that the District discriminated against XX—Redacted—XX.

OCR enforces Title IX, as amended, 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 receiving financial assistance from the Department. The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdiction to investigate this complaint under Title IX.

In its investigation, OCR reviewed documentation from the Complainant and the District, as well as the District's policies and procedures relating to sexual harassment. OCR also interviewed the Complainant and several District staff members and XX—Redacted--XX.

OCR has determined that the District failed to XX—Redacted--XX. OCR also determined that the District's grievance procedures, Title IX Coordinator, and notice of nondiscrimination fail to comply with the requirements of Title IX. The District signed an Agreement on November 4, 2015, to address these compliance concerns.

LEGAL AUTHORITY

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

Under Title IX, school districts that receive Federal financial assistance are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment 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. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; 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 of the harassment, the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. A single instance of rape is sufficiently severe to create a hostile environment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. A recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of peer sexual or third party harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject students to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately.¹ A recipient's obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for admission and employment, 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

¹ See OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (January 19, 2001) (p. 17).

of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

1. notice to students and employees of the procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
3. provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. written notice to both parties of the outcome of the complaint and any appeal; and
6. an assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed.

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant alleging harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a university faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

BACKGROUND

XX—Paragraph Redacted--XX

DISTRICT POLICIES AND PROCEDURES

Reporting Process

The District told OCR that complaints may be directed to the Supervisor of Student Support Services and Ombudsman (Supervisor) and that parents and others are notified that they may contact the Supervisor through the District website, the school calendar and on television. The Supervisor advises complainants that they may file a written or an oral report. If the complaint alleges wrongdoing by a student, the Supervisor remains involved; if by an adult, the Director of Human Resources handles the matter. The Supervisor told OCR that he is the Superintendent's designee for handling complaints.

Notice of Non-Discrimination

The District did not provide OCR with a copy of its Notice of Non-Discrimination; nevertheless, we obtained a copy of the "Non-Discrimination Policy" (the Policy) from the District's website, which states: "*The Board is committed to promoting the worth and dignity of all individuals. The Board will not tolerate nor condone any acts of bias, discrimination, insensitivity or disrespect toward any person on the basis of race, color, gender, sexual orientation, age, national origin, religion, socio-economic status or disabling condition.*" Although the Policy is published on the District's website, it was not easily located.

The District's 2013-2014 and 2014-2015 Student/Parent Handbooks (the Handbook) also include a notice of non-discrimination; however, it varies from the above-referenced Policy: "*The Board of Education of Queen Anne's county does not discriminate on the basis of race, color, sex, religion, national origin, age or disability in matters affecting employment, access to educational programs, or activities.*" According to the District, all students receive a copy of the Handbook, and it is also easily accessible on the District's website.

Title IX Coordinator

The District's Title IX Coordinator has served in that capacity for four years and also serves as the Supervisor of Instruction. The Title IX Coordinator described his role as keeping the District informed about changes in regulations. He stated that every year he attends two state conferences at the Maryland State Department of Education (MSDE), which provides training on academics, equity issues and discrimination. According to the Title IX Coordinator, Title IX training for staff is provided by Human Resources. The Title IX Coordinator acknowledged that he had never handled any Title IX sexual harassment incidents or complaints, although the process in place called for his involvement. In addition, the designated Title IX Coordinator is not referred to as the Title IX Coordinator in any of the District publications available on its website, including the Handbook. As noted above, the District explained that complaints of sexual harassment involving students are usually addressed by the Supervisor. The Supervisor stated that, although he had received harassment training by Human Resources, he had never received Title IX training.

Grievance Procedures

At the time of the incident, the District had three policies addressing sexual harassment as follows:

1. Sexual Harassment Policy

The Sexual Harassment Policy states that it shall be a violation for staff members to harass another staff member or student and for students to harass other students. It further states that allegations in complaints will be investigated, and if a preponderance of the evidence supports such a complaint, immediate action will be taken.

The Policy defines sexual harassment as unwelcome sexual advances, requests for sexual favors and other inappropriate verbal or physical conduct of a sexual nature when made by any member of the school staff to a student and/or another staff member, student to another student or a student to any staff member, and when such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance, or creating an intimidating, hostile or offensive employment or educational environment. The examples in The Policy include: forms of verbal, written/graphic or physical harassment or abuse, pressure for sexual activity, inappropriate patting, pinching or brushing against individual's body, inappropriate staring, ogling, or gazing of a sexual or demeaning nature, repeated remarks to a person with sexual or demeaning implications, suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning one's grades, job, health, welfare, property, etc.

The Policy further states that any person who alleges sexual harassment by any staff member or student in the District may complain immediately to his or her immediate supervisor, building principal or Director of Human Resources. In addition, the Policy provides that the complainant and the accused have a right to confidentiality, which will be respected consistent with the District's legal obligations, and with the necessity to investigate allegations of misconduct, and to take corrective action when this conduct has occurred.

The Policy states that a substantiated charge against a District staff member shall subject him/her to disciplinary action including, but not limited to warning, suspension or job termination. A substantiated charge against a student in the District shall subject that student to disciplinary action including, but not limited to, warning, suspension or expulsion.

Although the Policy is published on the District's website, it is not easily located.

2. Parent/Student Handbook Sexual Harassment Policy

District counsel advised OCR that the Handbook contains the District's policies and procedures that apply to complaints of sexual harassment. The 2014-2015 Handbook contains a text box entitled "Sexual Harassment," within Handbook's section regarding Bullying and Harassment, which states:

Students who feel they have a complaint under the Board of Education's Harassment Policy should immediately contact the school counselor or building administrator. If the accused is a student, a written report will be placed in their folder if the complaint has been substantiated. The administrator will also send a copy of the report to the Supervisor of Student Services. Should the student feel

that his/her complaint needs further action, the student may request a review of the complaint by: Student Services (if the complaint is against a student) or the Director of Human Resources (if the complaint is against an employee).

Student Services and/or the Director of Human Resources will review the complaint and school based decisions. Student Services and/or the Director of Human Resources will file a written report with recommendations to the Superintendent with a copy given to the complainant.

The Superintendent will review the complaint that Student Services and/or Human Resources report and take appropriate action.

The Handbook also contains a copy of the District's Bullying, Harassment, or Intimidation Reporting Form. The form states that it may be used to report harassment based on sex, and according to the District, it is available at the School and on the District's website. OCR notes that the online version of the form contains a check box to specify sexual harassment or harassment that is sexual in nature, and provides a detailed definition of sexual harassment.

The Handbook also contains the District's discipline code, which includes a list of infractions, definitions of each infraction, possible minimum consequences, and possible maximum consequences. Sexual harassment, sexual activity and sexual attack are listed as separate infractions in the discipline code.

3. Sexual Harassment Complaint Procedure (Employees)

The District maintains a separate Sexual Harassment Complaint Procedure that applies only to employee harassment. The Procedure provides the definition of sexual harassment and some examples. This Procedure states that any employee who has a complaint of sexual harassment at work by anyone, including supervisors, co-workers or visitors, must bring the problem to the attention of responsible Board of Education employees. It further states that employees may bring their complaint to their supervisor or Director of Human Resources, and that all complaints will be promptly handled and investigated by the Director of Human resources or his/her designee. The Procedure also indicates that confidentiality will be maintained to the extent possible, and that any employees or administrative personnel who are found to be responsible for sexual harassment will be subject to appropriate disciplinary measures.

Training/Outreach

District staff interviewed by OCR stated that they receive training at the beginning of each year by Human Resources, which addresses harassment, and all staff interviewed were uniformly aware of the District's procedures for addressing complaints of sexual harassment. As for students, the District asserted that it follows Positive Behavioral Interventions and Supports (PBIS) throughout its schools, and provided OCR with the School's PBIS Master School Wide Matrix that is reviewed and posted with the Pre-K through 2nd grade students. The Principal told OCR that, at the Pre-K-2 level, they talk age appropriately to the students, using words like, "no touching." He stated that parents of the young students learn about the PBIS Matrix from the school calendar and other publications. In addition, at the start of the school year, the classroom teacher reviews the PBIS Matrix with the students, who are further instructed to keep their hands, feet and objects to themselves. The District indicated that the students are taken on a

school bus, to the cafeteria, nurse's office, bathroom, and in the hallways, while staff review the rules and expectations of acceptable behavior.

In addition to the PBIS Matrix, the School provided OCR with photographs of anti-bullying posters and banners that are posted throughout the School. The posters state, in relevant part: "I will keep my hands, feet and objects to myself."

The District provided OCR with copies of the following training materials provided to the Title IX Coordinator and School personnel responsible for investigating and/or resolving complaints of sexual harassment for the 2013-2014 and 2014-2015 school:

- Annual Policy Presentation: The training referred employees to the online policies, including reporting child abuse and sexual harassment. However, the substantive training addressed only workers' compensation.
- 2013-2014 and 2014-2015 Policy Presentation: The training addressed the obligation of all staff members to report suspected child abuse or neglect, and defined sexual abuse. The training further clarified the reporting procedures, and addressed the District's sexual harassment policy. It appears, however, that the training only addressed sexual harassment in the employment context and referred employees to the Human Resources Officer for reporting purposes.

LEGAL ANALYSIS

OCR concludes that the District does not have policies and procedures that provide for the prompt and equitable resolution of Title IX complaints. The District's notice of non-discrimination does not comply with Title IX because does not state that the District does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. In addition, the notice of non-discrimination does not refer to the Title IX Coordinator, and does not provide his contact information.

OCR also found that the District's Title IX Coordinator is not identified in the District's publications, including the Student/Parent Handbook, or on the District's website. We further note that the Title IX Coordinator was not involved in the processing of this complaint. More importantly, OCR notes that the Title IX Coordinator stated that he had not received, processed, investigated or resolved any Title IX sexual harassment complaints, XX—Redacted--XX.

With regard to the District's Title IX grievance procedures, we conclude that the District's Policy: only applies to harassment carried out by students and employees, not third parties; does not state that the investigation will be adequate, reliable and impartial, including an equal opportunity to present witnesses and relevant evidence; does not provide for any timeframes; does not provide that written notice of the outcome of the complaint will be provided, and does not provide an assurance that the District will take steps to prevent recurrence of harassment and correct its discriminatory effects on the complainant and others, if appropriate. We further conclude that the Policy is difficult to locate on the District's website.

With regard to training, the training materials submitted to OCR reflect that District staff has not received adequate training regarding sexual harassment among students, and their responsibilities for addressing, investigating and resolving such harassment.

In light of the foregoing, OCR finds that the District does not have prompt and equitable Title IX grievance procedures as required by the regulation implementing Title IX at 34 C.F.R. § 106.8(b).

HOSTILE ENVIRONMENT

Response to Complainant's Complaint

XX—Paragraphs Redacted--XX

LEGAL ANALYSIS

The Complainant alleged that the District failed to promptly and effectively respond to the Complainant's XX—Paragraph Redacted--XX

CONCLUSION

OCR concludes, by a preponderance of evidence that the District failed to respond promptly and effectively to XX—Redacted--XX. In addition, the District does not have prompt and equitable Title IX grievance procedures as required by the regulation implementing Title IX at 34 C.F.R. § 106.8(b), does not maintain an adequate notice of non-discrimination as required by the regulation implementing Title IX at 34 C.F.R. § 106.9(a), and does not have an adequate designated Title IX Coordinator as required by the regulation implementing Title IX at 34 C.F.R. § 106.8(a). Accordingly, the Resolution Agreement is aligned with the information gathered during OCR's investigation concerning this allegation.

OCR will closely monitor the implementation of the Agreement until the recipient is in compliance with the statute(s) and regulations at issue in the case.

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. 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 Complainants may file another complaint alleging such treatment.

Page 9 - Dr. Carol A. Williamson

OCR is committed to prompt and effective service. If you have any questions, please contact Amy Niedzalkoski at (215) 656-8571, or by email at amy.niedzalkoski@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader
Philadelphia Office

Enclosure

cc: Rochelle Eisenberg, Esq.