



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 23, 2016

IN RESPONSE, PLEASE REFER TO: 03151104

Mr. Mike Kopakowski
Superintendent
Morrisville Borough School District
550 West Palmer Street
Morrisville, PA 19067

Dear Mr. Kopakowski:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint that XXXXXX (the Complainant) filed against the Morrisville Borough School District (the District) alleging discrimination on the bases of sex and disability. Specifically, the Complainant alleged that the District XXXXXX on the bases of disability and sex.

OCR enforces:

- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex by recipients of Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities such as elementary and secondary education systems.

Because the District receives Federal financial assistance from the Department and is a public entity, the District is subject to these laws.

During the investigation, OCR reviewed documentation provided by the District and the Complainant and interviewed the Complainant. Based on this information, OCR determined that the District's applicable grievance procedures and notice of non-discrimination do not comply with Section 504, Title II, and Title IX. In addition, prior to the conclusion of our investigation, the District voluntarily requested to resolve the complaint allegations. The attached agreement

resolves this complaint based on the information gathered to date. The basis for OCR’s determination is set forth below.

Legal Standards

Hostile Environment Based on Sex

The regulation implementing Title IX, 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 education program or activity operated by a recipient. 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 denies or limits a student’s ability to participate in or benefit from the recipient’s program.¹

In determining whether this denial or limitation has occurred, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the school district; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment. Title IX also protects all students at recipient institutions from sex harassment, including male and female students.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. 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. A recipient’s

¹ The applicable legal standards described herein are more fully discussed in OCR’s 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (April 4, 2011); for further clarification on this topic, see “Questions and Answers on Title IX and Sexual Violence,” at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014). See also OCR’s 2010 Dear Colleague Letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (October 26, 2010), and 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).

obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

Even if the sexual harassment did not occur in the context of an education program or activity, a recipient must consider the effects of the off-campus sexual harassment when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual harassment while at school or in an off-campus education program or activity.

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 sex discrimination, sexual harassment, and sexual assault/violence. Title IX does not require a school district to provide separate grievance procedures for sexual harassment complaints, including sexual assault/violence complaints.

A district may use student disciplinary or other separate procedures for these complaints; however, a district's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX. 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 or harassment carried out by employees, students, and third parties;
3. provision for adequate, reliable, and impartial investigation of complaints, including an opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for major stages of the complaint process;
5. written notice to parties of the outcome of the complaint and any appeal; and
6. an assurance that the institution 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.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;

6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy and support.

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.

The Title IX implementing 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. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator. The coordinator's responsibilities include overseeing the recipient's response to Title IX reports and complaints of sexual harassment, including sexual assault/violence, and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The coordinator or designee should be available to meet with students, as needed. The Title IX coordinator should not have other job responsibilities that may create a conflict of interest. Also, as noted above, recipients must ensure that employees designated to serve as Title IX coordinators have training or experience in handling sexual harassment, including sexual assault/violence complaints, and in the operation of the recipient's grievance procedures.²

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients 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 its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX Coordinator or to OCR.

Hostile Environment Based on Disability

The regulation implementing Section 504 prohibits the District from discriminating on the basis of disability. The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual 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 which receives Federal financial assistance. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

² See also OCR's April 24, 2015 Dear Colleague Letter on Title IX Coordinators, which is available at, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

Disability harassment that is severe, pervasive or persistent can result in the denial or limitation of a student's ability to participate in or receive benefits, services or opportunities from the school's program. If a recipient receives information indicating that a student may have been harassed on the basis of disability, the recipient is responsible for investigating the allegations and, if a hostile environment is found, to take immediate effective action to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

To establish a violation under the hostile environment approach, OCR must determine whether the conduct constitutes a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment is severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability. In addition, where a recipient has notice of the conduct, we determine whether it took prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The Section 504 regulation, at 34 C.F.R. Section 104.8(a), and the Title II regulation, at 28 C.F.R. Section 35.106, require that recipients and public entities provide notice that it does not discriminate on the basis of disability. In addition, the Section 504 and Title II regulations require that recipients designate an individual(s) to coordinate its compliance efforts with these statutes. See 34 C.F.R. Section 104.7(a) and 28 C.F.R. Section 35.107(a).

The Section 504 implementing regulation, at 34 C.F.R. Section 104.7(b), requires a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulation, at 28 C.F.R. Section 35.107(b), similarly requires a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to parents of elementary and secondary school students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination 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 major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Review and Analysis of District's Policies and Procedures

OCR reviewed the District's notice of non-discrimination, grievance procedures for resolving complaints under Section 504, the ADA, and Title IX, and the individual(s) designated for ensuring the District's compliance with those regulations.

Notice of Non-discrimination

OCR reviewed the District’s notice of non-discrimination which appears in various District publications. OCR specifically reviewed the notices found on pages 3 and 52 of the 2014-15 Morrisville Middle/Senior High School Student Handbook and Parent Guide, the District’s website, and the notice found in Policy 103- *Nondiscrimination in School and Classroom Practices*. None of the notices contains all of the elements required by Title IX, Section 504, and the ADA. Further, the notices are not consistent in the information each contains and they do not include the name or title, and contact information, including email address(es) of the District’s employee(s) who serve as the Title IX, Section 504, and/or ADA Coordinators.

The District’s Title IX and Section 504 Grievance Procedures

The District has several policies and procedures relevant to discrimination on the basis of sex or disability:

- *Policy #103 – Nondiscrimination in School and Classroom Practices*
- *Policy#103.1 – Nondiscrimination in School and Classroom Practices – Qualified Students with Disabilities*
- *Policy #248 – Unlawful Harassment*

OCR notes that all three policies contain the same grievance procedures with regard to investigations, findings and corrective action and we will collectively refer to them as “grievance procedures.” The policies, however, contain different standards as to how individuals may report prohibited actions under each. Policy 103 pertains to complaints alleging any prohibited action, including those based on race, sex, disability and other protected bases; Policy 103.1 is specific to complaints of disability discrimination only; and Policy 248 pertains to complaints of harassment, including sex and disability harassment.

OCR notes the following with regard to the grievance procedures:

- they are unclear as to whether they apply to complaints filed by employees;
- the grievance procedures do not provide designated and reasonably prompt timeframes for the major stages of the complaint process other than stating that an investigative report will be issued within fifteen (15) days, although when the time period of 15 days begins and ends is not clear;
- the grievance procedures do not expressly provide the parties with the opportunity to present witnesses and other evidence;
- the grievance procedures only afford the Complainant the opportunity to appeal and appeal procedures are not provided to both parties; and
- Policy 103.1 requires that complaints be made in writing unless a complainant is unable to file a written complaint.

The District’s Title IX and Section 504 Coordinators

The District’s policies state that the Superintendent has been designated the District’s “Compliance Officer.” Policy 103.1 states that the District’s Director of Pupil Services and Special Education is the Section 504 and ADA Coordinator. We note that the District’s

designation of the Superintendent as Title IX Coordinator may create a potential conflict of interest due to the job responsibilities of that position.

Conclusion – District’s policies and procedures

OCR finds that the District’s notice of nondiscrimination and grievance procedures do not comply with the requirements of Title IX, at 34 C.F.R. §§ 106.8(b) and 106.9, Section 504, at 34 C.F.R. §§ 104.7(b) and 104.8(a), and Title II at 28 C.F.R. § 35.107(b). These compliance concerns will be resolved by the District’s fulfillment of the terms of the attached Resolution Agreement signed by the District on February 19, 2016. Under the Agreement, the District will revise its grievance procedures and notice of nondiscrimination, subject to OCR’s review and approval, to ensure that they comply with Title IX and Section 504. The District will also designate an employee to serve as Title IX Coordinator in accordance with the requirements of Title IX.

xx – paragraphs redacted – xx

The District signed the enclosed Resolution Agreement, the provisions of which align with the complaint allegations, the issues investigated, and are consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

As is our standard practice, OCR will monitor the District’s implementation of the Agreement until we have determined that the District is in compliance with the regulations implementing Title IX and Section 504 with respect to the concerns identified in this investigation and the issues raised in this 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 file a private 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, 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.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR’s finding, you may contact Elizabeth Cavallucci, Equal Opportunity Specialist, at (215) 656-6939 or Elizabeth.cavallucci@ed.gov or Dannelle Walker, Team Attorney, at (215) 656-5711, or by email at: dannelle.walker@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader

Enclosure

cc: Paul Cianci, Esq.