



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

February 3, 2016

Dr. Brian McDonald
Superintendent
Pasadena Unified School District
351 S. Hudson Ave.
Pasadena, CA 91101

(In reply, please refer to OCR Docket No. 09-14-1226.)

Dear Dr. McDonald:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Pasadena Unified School District (Recipient). The Complainant alleged that the Recipient discriminated against her daughter (Student) on the basis of disability, race, and sex and against her for advocating on behalf of the Student on the same bases.¹ Specifically, OCR investigated the following issues:

- 1) Whether the Student was subjected to harassment on the basis of disability, race and sex, and whether the District failed to promptly and equitably investigate the Complainant's allegations of harassment the Student on the basis of disability, race, and sex.
- 2) Whether the District retaliated against the Complainant for advocating on behalf of the Student's right to be free from discrimination and harassment and filing this OCR complaint by taking unwarranted adverse personnel actions against her, including termination.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, as amended, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972, and their implementing regulation. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II over complaints alleging discrimination on the basis of disability that are filed against certain public entities. Title IX prohibit discrimination based on sex and Title VI prohibits discrimination on

¹ OCR previously provided the Recipient with the identity of the Complainant and the Student. We are withholding their names from this letter to protect their privacy.

the basis of race by recipients of Federal financial assistance. The District receives Department funds, is a public education system, and is subject to the requirements of the aforementioned laws and their regulations.

OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the recipient, and by conducting interviews. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to Issue 1. With respect to Issue 2, OCR found both that some of the allegations had been resolved in the Complainant's favor and that there was insufficient evidence to support the finding. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

Issue 1: Whether the Student was subjected to harassment on the basis of disability, race and sex, and whether the District failed to promptly and equitably investigate the Complainant's allegations of harassment the Student on the basis of disability, race, and sex.

Legal Standard

Harassment of a student based on disability, race, and or sex can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. A school district may violate Section 504, Title II, Title VI, and or Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately.

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 promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed and prevent the harassment from recurring.

The Section 504, Title II and Title IX regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include adoption and publication of grievance procedures providing,

respectively, for the prompt and equitable resolution of complaints of disability and sex discrimination (34 C.F.R. §104.7[b], 28 C.F.R. §35.107[b]), & 34 C.F.R. § 106.8[b]).

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents of elementary and secondary school students, and employees, including where to file complaints; application of the procedure to complaints alleging harassment 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 harassment and to correct its discriminatory effects.

Factual Background

- During the 2013-2014 school year, the Student, a white female, was a sophomore at Pasadena High School (PHS), diagnosed as a student with autism and behavioral issues requiring an IEP and Behavioral Support Plan.
- In January 2014, the Student's IEP team agreed to assign the Student a behavioral aide.

In her OCR complaint and in a series of subsequent email communications to OCR, the Complainant, who was also a teacher in the District, alleged the following acts of discrimination and harassment against the Student:

- Harassment allegation 1: On October X, 2013, in the Student's XXXXXXXX class, several other students made derogatory remarks about the Student's disability. An unknown student threw a juice box at the Student, striking her in the back of the neck. The Complainant alleged that the Program Specialist refused to discuss the harassment allegation when it was brought to her attention at an IEP meeting on October XX, 2013.
- Harassment allegation 2: On October XX, 2013, five boys verbally harassed (called the Student stupid), and threw carrots at the Student, as she waited for the Complainant to pick her up at the front of the school. Upon arrival, the Complainant called the local police department and notified an assistant principal of the incident. The Complainant alleged that an assistant principal failed to investigate the harassment allegation. On October XX, 2013, at an IEP meeting, another assistant principal refused to examine harassment allegation 2.
- Harassment allegation 3: On November X, 2013, the Student was harassed on the basis of disability by male students in XXXXXXXX class. The Complainant told the XXXXXXXX teacher who refused to take action. The Complainant alleged that the XXXXXXXX teacher failed to address the harassment allegation.

- Harassment allegation 4: On December X, 2013, during a XXXXX XXXXXXXXXX, the Student and another student became involved in a verbal altercation in which the Student was verbally harassed on the basis of sex and disability. This led to the students texting angry words via cellphone, and eventually led to a physical altercation between the students. The other student's mother became involved and verbally harassed the Student during the XXXXX XXXXXXXXXX. The Complainant notified local police and the assistant principal.
- Harassment allegation 5: On February X, 2014, during the CAHSEE Exam, the Student was called a "White ass witch" and "White ass weirdo" by an African American student. The Student retaliated by calling the African American student a racially derogatory slur.
- Harassment allegation 6: The Complainant alleged the Student was physically assaulted as she exited her XXXXXXXXXX class on February XX, 2014.
- Harassment allegation 7: The Complainant alleged that the January 2014 IEP team assignment of a 1:1 behavioral aide was inappropriate, discriminatory, and harassing to the Student in an email dated April XX, 2014. The Complainant alleged that the District refused to address the harassment allegation, by not removing the behavioral aide from the Student. The Complainant made this request via a May X, 2014 letter to the Superintendent, Director of Special Education, Program Specialist, and Principal. The May X letter did not raise discrimination or harassment as an issue.
- Harassment allegation 8: In March 2014, the Complainant alleged that several boys in the Student's Special Education XXXX class verbally harassed the Student on the basis of sex.
- Harassment allegation 9: The Complainant alleged that the Student was harassed on the basis of sex when a male student exposed his genitalia to the Student on April XX, 2014.

On June 5, 2014 the District provided OCR with extensive documentation of its responses to the Complainant's allegations of harassment. In each instance of harassment (1-9 above), the District interviewed witnesses, interviewed the Complainant and the Student, and attempted to determine if harassment occurred. The District's investigation found the following:

- Harassment Allegation 1: The Student engaged in mutual verbal harassment with the other students. The District found insufficient evidence to conclude that a juice box was thrown at Student.
- Harassment Allegation 2: No evidence was found to show the students engaged in verbal harassment of the Student, or threw carrots at her. The police investigation found no evidence as well.

- Harassment Allegation 3: The Student engaged in mutual verbal harassment with the other students.
- Harassment Allegation 4: The Student engaged in mutual verbal harassment with the other student. The District found evidence that Student was the instigator.
- Harassment Allegation 5: The Student engaged in mutual verbal harassment of the African American student.
- Harassment Allegation 6: The District found evidence that the Student instigated the physical contact (bumping the other student as he came through the classroom door).
- Harassment Allegation 7: OCR determined that this allegation was related to an appropriate placement disagreement, and not a harassment issue. The District has attempted to hold IEP meetings to resolve the disagreement; however, the parties will not agree to an appropriate placement.
- Harassment Allegation 8: The Student engaged in mutual verbal harassment with the other students.
- Harassment Allegation 9: The police and District investigation revealed that a male student did not expose his genitalia to the Student on April XX, 2014, but rather, the incident occurred sometime in April or May of 2013. A school administrator conducted interviews and confirmed the incident with the alleged perpetrator. The student who exposed himself admitted to the incident and was suspended for three days.

Summary and Resolution

As discussed previously, on June 5, 2014 the District provided OCR with documentation of its investigation of the Complainant's allegations of harassment. In each instance of harassment (1-9 above), the District interviewed witnesses, interviewed the complainant and the Student, and attempted to determine if harassment occurred.

While the District's investigative steps (interviewing witnesses, the Student, and the Complainant), were prompt on their face, OCR had further questions for the District with regard to the District's notification of its findings to the Complainant and responsiveness to the multiple, mutual instances of harassment in which Student and other students engaged. In September 2014, OCR contacted the District to set up on-site interviews. In response, the District requested to enter into an agreement pursuant to section 302 of OCR's case processing manual.

Issue 2: Whether the District retaliated against the Complainant for advocating on behalf of the Student's right to be free from discrimination and harassment and filing this OCR complaint by taking unwarranted adverse personnel actions against her, including termination.

Legal Standard

The Title VI regulations, at 34 C.F.R. §100.7(e), prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title VI. The Title IX regulations, at 34 C.F.R. §106.71, and Section 504 regulations, at 34 C.F.R. §104.61, incorporate 34 C.F.R. §100.7(e). The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school district can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Factual Background

- Prior to the 2013-2014 school year, the Complainant taught at XXX. The Complainant was transferred to XXXX XXXX XXXX School for the 2013-2014 school year.
- The Complainant alleges she was involuntarily transferred from XXX to XXXX XXXX XXXX School for the 2013-2014 school year, after bringing an attorney to her daughter's manifestation determination hearing during the 2012-2013 school year. The Complainant grieved the transfer via her Labor Union representation. The Union lost the grievance as the District was able to show the transfer was for budgetary reasons.
- On December XX, 2014, the principal of XXXX XXXX wrote to the Complainant, putting her on "Written Warning" for inappropriate lesson planning, and showing excessive videos during instructional time.
- After December XX, 2013, the Complainant took an extended leave of absence from her employment at the District, due to stress. The Complainant felt that there was a hostile work environment at XXXX XXXX.

- On April XX, 2014 the Complainant received a “Teacher Summative Evaluation” which described her performance in all areas as “Needs to Improve” or “Unsatisfactory”. The evaluators were two assistant principals at XXXX XXXX XXXX School (XXXX).
- On May XX, 2014, the Complainant’s Union filed a “Grievance Procedure-Formal Level One” in protest of the April XX, 2014 Teacher Summative Evaluation. The Grievance resulted in some of the negative evaluation being rescinded.
- The Complainant alleged to OCR on August XX, 2014, that she was terminated from her PUSD employment.
- In a letter dated August XX, 2014, the District notified the Complainant that her leave of absence request was denied and that she will be removed from “Active Employment”; however, when the Complainant decides to return to work, she will be placed on a “reemployment list” where she will be assigned to the first available vacancy in her classification.
- On September XX, 2014, the Complainant alleged to OCR that she requested the District reassign her to any site other than XXXX XXXX but had been ignored while a former colleague of hers was granted a reassignment even though he engaged in inappropriate misconduct of a sexual nature.

Summary and Resolution

OCR found that the Complainant had engaged in a protected activity when she advocated on behalf of her daughter, filed complaints with the District and OCR, and brought an attorney to the Student’s manifestation determination hearing.

OCR found that the Complainant’s lateral transfer to another high school, teaching the same subject, was not, on its face, an adverse action. Additionally, the District provided evidence to OCR that the transfer was made based on budgetary reasons, which is a legitimate, non-retaliatory justification for the action. OCR also determined that the District did not terminate the Complainant because the District notified the complainant that when she decided to return to work she would be placed as soon as possible.

OCR found that personnel actions against the Complainant, as described in the April XX Summative Evaluation, could be considered adverse. However, the evaluations were reviewed through the Union’s grievance process. As the grievance process offered the Complainant an opportunity to present evidence in her favor and resulted in positive changes in the evaluation, OCR closed the investigation of these allegations. Based on the foregoing, OCR determined that

there was insufficient evidence to support a conclusion that the District retaliated against the Complainant as alleged.

Conclusion

Prior to concluding its investigation of Issue 1, the District, without admitting to any violation of law, entered into the enclosed resolution agreement. Under the agreement, the District will:

1. provide PHS educators and students, including special education students with education on preventing bullying and harassment, specifically with regard to bullying and harassment on the basis of disability, race, and sex;
2. disseminate direction and guidance to its PHS administrators (and any other faculty/staff responsible) on reporting findings to its complainants any time it conducts an internal investigation of disability, race, and sex harassment; and
3. provide the Complainant with a written summary of its investigations of the Complainant's allegations of disability, race, and sex harassment undertaken during the 2013-2014 school year.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the Recipient is in compliance with the statute(s) and regulations at issue in the case.

This concludes the investigation of this complaint. OCR's determination in this matter should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the Recipient 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Gloria Guinto (gloria.guinto@ed.gov) at 415-486-5519.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure