



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 3, 2015

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Dr. Elaine Beraza
Superintendent
Yakima School District No. 7
104 North Fourth Avenue
Yakima, Washington 98902

Re: Yakima School District No. 7
OCR Reference No. 10115001

Dear Superintendent Beraza:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the Office for Civil Rights (OCR), U.S. Department of Education (the Department), against the Yakima School District (the District). The compliance review examined whether the District takes appropriate action to address harassment of students based on race, color, national origin, sex, or disability.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.* (Title VI), and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin in programs and activities receiving financial assistance from the Department; Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.* (Title IX), and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department; and, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, as amended (Section 504), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12131 *et seq.* (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by certain public entities. The District receives financial assistance from the Department and is a public entity; therefore, it is subject to Title VI, Title IX, Section 504, and Title II.

Background

The District is located in the city of Yakima, which is within Yakima County in Washington State. The District is the 18th largest in Washington State. There are 23 schools in the District.

When OCR initiated this compliance review in school year 2011-2012, there were 15,156 students in the District. Male students comprised 51.1% of the student body, female students comprised 48.9%. The majority of students, 11,186 (73.8%), identified as Hispanic/Latino;

3,104 (20.5%) as white; 441 (2.9%) identified as two or more races; 163 (1.1%) as African American; 156 (1.0%) as American Indian or Alaskan Native; 94 (.6%) as Asian; and 12 (.1%) as Native Hawaiian/Pacific Islander. Students with disabilities qualified under the Individuals with Disabilities Education Act (IDEA) constituted 11.3% of the student body, and 1.1% of students were eligible under Section 504 only.

As of school year 2014-2015, there are 16,103 students in the District. Male students comprised 50.4% of the student body, female students comprised 49.6%. The majority of students, 12,302 (76.4%), identified as Hispanic/Latino; 3,010 (18.7%) as white; 416 (2.6%) identified as two or more races; 140 (.8%) as African American; 143 (.9%) as American Indian or Alaskan Native; 83 (.5%) as Asian; and 9 (.1%) as Native Hawaiian/Pacific Islander. Students with disabilities qualified under IDEA constituted 13.5% of the student body, and 1.2% of students were eligible under 504 only. The most recent Washington State Office of the Superintendent of Public Instruction (OSPI) Behavior Report revealed that during school year 2012-2013, the District suspended or expelled a total of 229 students for “bullying”.

During the course of the investigation, OCR interviewed District administrators, school principals and assistant principals, teachers, counselors, psychologists, security personnel, identified Section 504/Title II and Title IX coordinators, student services coordinators, and any other staff involved with the process for responding to incidents of harassment. In total, OCR conducted approximately 170 interviews of administrators, school staff, parents and community members. OCR also met with groups of students at five schools and conducted meetings with community organizations and youth advocates. OCR reviewed the District’s policies prohibiting discrimination, including harassment against students on the bases of race, color, national origin, sex, and disability. Additionally, OCR reviewed grievance and complaint procedures for resolving complaints of harassment against students on the bases of race, color, national origin, sex, and disability. OCR also sought to determine whether the District had an appropriate notice of non-discrimination and had designated a person(s) to coordinate its efforts to comply with and carry out its responsibilities under the regulations implementing Title IX, Section 504 and Title II, as required by 34 C.F.R. §§ 106.8(a), 104.7(a) and 104.8(a); and, 28 C.F.R. §§ 35.107 and 35.108, respectively. For each elementary, middle, and high school, OCR reviewed records reflecting incidents of alleged discrimination, harassment, bullying, or violence (including allegations of actual or attempted assault) against students based on race, color, national origin, sex, and disability that were reported to the school or the District from the beginning of the 2008-2009 school year through the date of OCR’s supplementary data request in 2013.

OCR determined that the District is in violation of the regulations implementing Title IX, Section 504 and Title II for failing to provide adequate notice of the name/title and contact information of the persons designated to coordinate the District’s compliance with these regulations; an effective notice of non-discrimination in a form and format required by these regulations; and a grievance procedure that provides for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by these regulations. Prior to completing the investigation of the remaining issues in this compliance review, the District expressed an interest in resolving the identified violations and the remaining issues with a resolution agreement.

Legal Standards¹

School districts may violate Title VI, Title IX, Section 504 and Title II and the Department's implementing regulations when harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently serious so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school 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 school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (e.g., not requiring the target to change his or her class schedule).

In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond. A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may need to include the issuance and effective implementation of new policies against harassment and new procedures by which students,

¹ These legal standards are outlined in OCR's Dear Colleague Letter dated October 26, 2010.

parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures), as well as wide distribution of the contact information for the district's Title IX and Section 504/Title II coordinators.

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

Racial Harassment²

Under Title VI and its implementing regulation at 34 C.F.R. §100.3, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color or national origin under any program or activity that receives financial assistance from the Department. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI. In addition, the existence of a racially hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of Title VI. A recipient will be found in violation of Title VI under the hostile environment theory if OCR finds that: (1) A racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. To determine whether a racially hostile environment exists, it must be determined if the racial harassment is severe, pervasive or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. In most cases, the harassment must consist of more than casual or isolated racial incidents to establish a Title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under Title VI varies inversely with their pervasiveness or persistence.

If OCR finds that a hostile environment existed under these standards, then it will proceed to determine whether the recipient received notice of the harassment, and whether the recipient took reasonable steps to respond to the harassment. If discriminatory conduct causes a racially hostile environment to develop that affects the enjoyment of the educational program for the student(s) being harassed, and if the recipient has actual or constructive notice of the hostile environment, the recipient is required to take appropriate responsive action. This is the case regardless of the identity of the person(s) committing the harassment (e.g., a teacher, a student, the grounds crew, a cafeteria worker, neighborhood teenagers, a visiting baseball team, a guest speaker, parents, or others). This is also true regardless of how the recipient received notice. So long as

² The information provided in this section is taken from "Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance", 59 Fed. Reg. 47 (March 10, 1994). All references to "race" used in this section include color and national origin if not otherwise indicated.

an agent or responsible employee of the recipient received notice, that notice will be imputed to the recipient.

In cases where the recipient did not have actual notice, the recipient may have had constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees. Examples of possible elements of appropriate responsive action include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

Sexual Harassment³

Sexual harassment of students, which includes acts of sexual violence⁴, is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.⁵ When a student sexually harasses another student, the harassing conduct 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 school's program. 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. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.

³ The information provided in this section is taken from OCR's Dear Colleague Letter dated April 4, 2011.

⁴ Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

⁵ Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. The school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.

Disability Harassment⁶

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the regulations implementing Section 504 and Title II. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program.

When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of free appropriate public education (FAPE) under IDEA, as well as Section 504

⁶ The information provided in this section is taken from OCR's Dear Colleague Letter dated July 25, 2000.

and Title II. These laws require school districts to provide an appropriate special education and related services to students with disabilities that enable them to access and benefit from public education. The specific services to be provided a student with a disability are set forth in the student's individualized education program (IEP) or Section 504 plan. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.

Educational institutions have a legal responsibility to prevent and respond to disability harassment. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring; and where appropriate, remedying the effects on the student who was harassed.

Summary of Review

As stated above, OCR conducted approximately 170 interviews of administrators, school staff, parents and community members. OCR also met with groups of students and conducted meetings with community organizations and youth advocates. OCR reviewed the District's policies prohibiting discrimination, including harassment against students on the bases of race, color, national origin, sex, and disability. Additionally, OCR reviewed grievance and complaint procedures for resolving complaints of harassment against students on the bases of race, color, national origin, sex, and disability. OCR also sought to determine whether the District had designated a person(s) to coordinate its efforts to comply with the regulation and had an appropriate notice of non-discrimination as required by the regulations implementing Title IX, Section 504 and Title II, at 34 C.F.R. §§ 106.8(a), 104.7(a) and 104.8(a); and, 28 C.F.R. §§ 35.107 and 35.108, respectively.

The Washington State Office of Superintendent of Public Instruction (OSPI) requires District schools to take action if students report they are being bullied. In compliance with OSPI requirements to document incidents of bullying and harassment, the District utilizes an electronic data storage system known as *Skyward*, to document all reported incidents of bullying and harassment and the associated consequences. For each elementary, middle, and high school, OCR reviewed records reflecting incidents of alleged discrimination, harassment, bullying, or violence (including allegations of actual or attempted assault) reported in *Skyward*. OCR selected and visited eight District schools in 2011.⁷ The selected schools had higher numbers of incidents of race, national origin, sex, or disability harassment reported in *Skyward* as compared to their counterpart schools in the District. Following a supplemental data request in 2013, OCR conducted a new review of data in *Skyward* of reported incidents of harassment at the District's schools; and selected a new list of eight schools for onsite visits in 2013.⁸

⁷ Adams Elementary; Barge-Lincoln Elementary; Martin Luther King Jr. Elementary; Hoover Elementary; Lewis and Clark Middle School; Wilson Middle School; Eisenhower High School; and Davis High School.

⁸ Adams Elementary; Barge-Lincoln Elementary; Whitney Elementary; Gilbert Elementary; Washington Middle School; Wilson Middle School; Davis High School; and, Eisenhower High School.

Designation of Coordinators

The regulations implementing Section 504, Title II and Title IX, at 34 C.F.R. §§ 104.7(a), 28 CFR § 35.107, and 34 CFR § 106.8(a), respectively, require the District to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these regulations. The District identified Nancy McHenry, the Health and Student Services Director, as the Section 504/Title II Coordinator. The District identified Jill Kelleher, Director of Human Resources, as the Title IX Coordinator. Accordingly, OCR determined that the District has identified at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these regulations, consistent with 34 C.F.R. §§ 104.7(a), 28 CFR § 35.107, and 34 CFR § 106.8(a).

The regulations implementing Title IX, Section 504, and Title II also require the District to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with these regulations. OCR policy also states that recipients should include an email address for the coordinator, and must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence. The District did not provide any documentation demonstrating that it notified parents, students or employees of the contact information that included the email address for these coordinators. Further, witnesses OCR interviewed were generally unable to identify the coordinators. Accordingly, OCR determined that the District is in violation of the regulations implementing Title IX, at 34 CFR § 106.8(a); Section 504, at 34 C.F.R. § 104.8(a); and Title II, at 28 C.F.R. § 35.107(a), for failing to adequately notify all students and employees of contact information of the persons designated to coordinate the recipient's compliance with these regulations.

Notice of Non-Discrimination

The regulations implementing Title IX, Section 504, and Title II contain requirements for recipients to implement specific and continuing steps to notify students, parents of elementary and secondary students, employees, and other specified individuals and entities that the recipient does not discriminate on the basis of sex or disability in its educational programs and activities. The regulation implementing Title IX, at 34 CFR § 106.8(a), requires this notice to also state that the requirement not to discriminate extends to employment and that inquiries concerning the application of Title IX may be referred to the coordinator or to OCR. Additionally, the regulation implementing Title IX requires that this notice be included in each announcement, bulletin, catalog, or application form which the recipient makes available to the persons described above or which is used in recruitment of students or employees. The regulation implementing Section 504, at 34 C.F.R. § 104.8, requires this notice to also state that the requirement not to discriminate also extends to employment; and, that the recipient include the notice in any recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees. The regulation implementing Title II, at 28 C.F.R. § 35.108, requires public entities to make this notice available to the persons described above in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination.

OCR requested that the District provide copies of announcements, bulletins, catalogs, or application forms containing the required notice of non-discrimination. In response, the District stated that the Notice of Nondiscrimination (Notice) is contained in Board Policy 3210.⁹ OCR reviewed the Notice, and determined that it did not specifically reference Title IX or state that inquiries concerning the application of Title IX may be referred to the District's Title IX coordinator or OCR. The Notice states that "anyone with an allegation of discrimination may request an informal meeting with the compliance officer or designated employee to resolve their concerns." Contact information for the "compliance officer" is not provided in the Notice; however, three District contacts are listed at the end of the Notice: Jill Kelleher, Human Resources Director, Title IX and ADA; Nancy McHenry, Health & Student Services Director, Section 504 services, and Kelli York, Program, Fiscal and OCR Compliance Officer. Contact information is not provided for any of these individuals.

The District did not provide any other announcements, bulletins, catalogs, or application forms containing the required notice of non-discrimination. OCR reviewed the District's website and determined that the District has Board Policy 3215, which specifically prohibits harassment, intimidation, and bullying. Although Board Policy 3215 states that the superintendent will appoint a compliance officer as the primary district contact to receive copies of all formal and informal complaints and ensure procedural implementation, and that the name and contact information for the compliance officer will be communicated throughout the district, there are no references within Board Policy 3215 regarding who the compliance officer is or how to contact him or her. Accompanying Board Policy 3215 is Reporting Form 3215XE, which students may use to report harassment, intimidation, and bullying. The form is available in English and in Spanish, but it does not state who the compliance officer is or how to contact him or her.

All District policies, including Board Policy 3210 and 3215, are available on the District's website and it is possible to locate them by searching the Board Policy index and entering search terms into the available search engine. Additionally, Board Policy 3215 and Reporting Form 3215XE can be accessed by clicking on "Family Resources" under the heading "Anti-Bullying." OCR did not observe copies of the Notice posted at various locations throughout the schools.

Based on the above, OCR determined that the District is in violation of 34 CFR § 106.8(a), 34 C.F.R. § 104.8, and 28 C.F.R. § 35.108, for failing to provide a notice of non-discrimination in a form and format required by the regulations implementing Title IX, Section 504 and Title II, respectively.

Grievance Procedures

The regulations implementing Title IX, Section 504, and Title II require the District to adopt and publish grievance procedures providing for a prompt and equitable resolution of student and employee complaints alleging any action prohibited by these regulations. OCR will review all aspects of a school's grievance procedures, including but not limited to the following elements that are critical to achieve compliance: (1) notice to students, parents of elementary and

⁹ Board Policy 3210 can be located on the District's website at: <http://www.yakimaschools.org/education/components/docmgr/default.php?sectiondetailid=6033&fileitem=2580&cafilter=519>.

secondary students, and employees of the grievance procedures, including where complaints may be filed; (2) application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to parties of the outcome of the complaint; and (6) 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.

OCR requested that the District provide copies of grievance procedures that meet these requirements. In response, the District stated that it has two separate board policies governing resolution of discrimination (Board Policy 3210) and harassment/bullying (3215)¹⁰ complaints. In addition, the District also published Board Policy 3216¹¹, which specifically governs sexual harassment. The sexual harassment procedures in Board Policy 3216 state that complaints of sexual harassment will be investigated pursuant to Board Policy 3210.

1. Notice of Policy and Procedures

Board Policy 3210 states that anyone (students and/or parents, staff, or other individuals acting on behalf of students of the District) with an allegation of discrimination may request an informal meeting with the compliance officer or designated employee to resolve their concerns. The policy states that such a meeting is optional and that a complainant may submit a written complaint to the compliance officer at any time. As stated above, the policy lists three District contacts, but does not provide contact information. All District policies, including Board Policy 3210 and 3216, are available on the District's website.

Schools that have their own student handbooks include statements that harassment and bullying are prohibited; however, procedures for reporting harassment or filing a complaint are not described, nor do they include the name or contact information for the coordinators.

2. Applicability

Board Policy 3210 does not specifically state that the procedures apply to complaints alleging harassment carried out by employees, or other students, or third parties; however, the sexual harassment procedures at Board Policy 3216 state that the District prohibits sexual harassment of students, employees, and others involved in school District activities.

¹⁰ Board Policy 3215 can be located on the District's website at: <http://www.yakimaschools.org/education/components/docmgr/default.php?sectiondetailid=6033&fileitem=2582&cafilter=519>.

¹¹ Board Policy 3216 can be located on the District's website at: <http://www.yakimaschools.org/education/components/docmgr/default.php?sectiondetailid=6033&fileitem=2583&cafilter=519>.

3. Adequate, Reliable, and Impartial Investigation; and,
4. Reasonably Prompt Timeframes

Board Policy 3210 does not specifically state that both the complainant and the accused will have an equal opportunity to present witnesses and relevant evidence; however, Board Policy 3210 includes three levels for the investigation and resolution of a written complaint.

Reasonably prompt timeframes are included for each of the major stages. Board Policy 3210 further states that if the complainant remains aggrieved, the complainant may seek resolution with federal or state agencies empowered with the authority to resolve such a complaint. A list of federal and state contacts, including OCR, is provided at the bottom of the policy along with addresses and telephone numbers for each.

5. Notice of the Outcome

Board Policy 3210 requires that the superintendent's written response be issued only to the complainant, and state that either: (1) the District denies the allegations contained in the written complaint received by the District; or (2) will implement reasonable corrective measures to eliminate any such act, condition, or circumstance within the school District. Any corrective measures deemed necessary will be instituted no later than 30 calendar days following the mailing of the student's written response unless otherwise agreed to by the complainant.

6. Protective Steps

Board Policy 3210 does not provide an assurance that the District will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant or others, nor does Board Policy 3210 outline interim steps the District may take to protect the student before the final outcome of the District's investigation of the grievance; however, the sexual harassment policy at Board Policy 3216 states that allegations of criminal misconduct will be reported to law enforcement, and suspected child abuse will be reported to law enforcement or Child Protective Services. Board Policy 3216 further provides that persons having found to have been subjected to sexual harassment will have appropriate school District services made reasonably available to them, and adverse consequences of the harassment will be reviewed and remedied, as appropriate.

Based on the above, OCR determined that the District does not have a grievance procedure that provides for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulations implementing Title IX, Section 504 or Title II, in violation of 34 C.F.R. § 106.8(b); 34 C.F.R. § 104.7(b), and 28 C.F.R. § 35.107(b), respectively. Specifically, the District's policies and procedures for addressing complaints of discrimination and harassment have the following deficiencies:

- The procedures for reporting harassment or filing a complaint are not described in individual schools' student handbooks, nor do they include the name or contact information for the coordinators.
- The procedures are not easily found and are not widely distributed.

- Policy 3210 does not specifically state that the procedures apply to complaints alleging harassment carried out by employees, or other students, or third parties.
- Board Policy 3210 does not specifically state that both the complainant and the accused will have an equal opportunity to present witnesses and relevant evidence.
- The procedures do not provide an assurance that the District will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, nor do they outline interim steps the District may take to protect the student before the final outcome of the District's investigation of the grievance.
- The procedures provide notification of the outcome and appeal rights only for the complainant.

Law Enforcement's Role

Administrators at the respective schools told OCR that they will refer criminally harassing conduct to law enforcement (they do have School Resource Officers (SROs) on school grounds), as necessary, but OCR does not have specific information regarding how any specific criminal complaint was handled and law enforcement's role. OCR also does not have specific information such as the number of referrals to law enforcement.

Training

Board Policy 3216 states that sexual harassment recognition and prevention is to be included in staff, student, and regular volunteer orientations, in-service training, or other appropriate forums. The Director of Human Resources did not describe specific training she had related to Title IX or investigation of student-on-student harassment. The Director described receiving training related to employment-related harassment, but did not describe training received related to student-on-student harassment. Principals described receiving training on how to document harassment incidents in the district's electronic data system; but few reported receiving training in how to investigate allegations of harassment. Staff reported receiving annual training regarding sexual harassment, but indicated that the training was related to employment rather than their specific obligations under Title IX for responding to complaints from students. Many staff members were unfamiliar with the District's formal complaint process despite reports that an annual training may occur at the beginning of the school year.

Tracking of Complaints of Bullying/Harassment

As stated above, OSPI requires District schools to take action if students report they are being bullied. Since August 2011, the OSPI has required each school district to adopt the model Washington anti-bullying policy and procedure; that model is reflected in the District policies 3210 and 3215 above. In compliance with OSPI requirements to document incidents of bullying and harassment, the District utilizes an electronic data storage system known as *Skyward*, to document all reported incidents of bullying and harassment and the associated consequences.

Climate Assessment

The District conducts annual climate surveys to gather opinions from parents and students about their perceptions of school climate. The survey covers several topics; including school safety, communications, and student learning. It is conducted in English and Spanish. While the surveys include questions about student's and parent's perceptions about school climate in general, the surveys do not include specific questions regarding sex, race, or disability harassment that may be relevant to this review.

Responses to Incidents of Sexual Harassment

As stated above, OCR selected and visited eight District schools in 2011 and eight in 2013. OCR interviewed staff, administrators, parents and students at these schools. OCR also reviewed any separate policies or procedures the schools maintained. Additionally, OCR reviewed files to assess how the selected schools responded to complaints or reports of sexual harassment.

OCR found that each of the schools that have their own student handbooks include statements that harassment and bullying are prohibited; however, procedures for reporting harassment or filing a complaint are not described, nor do these handbooks include the name or contact information for the Title IX Coordinator. OCR did not observe copies of the Title IX notice of non-discrimination posted at various locations throughout the schools.

While most school administrators reported being aware that the District has a Title IX Coordinator, some were unable to correctly identify the Title IX coordinator. The teachers interviewed stated that they did not believe that the district had a Title IX coordinator, or that they were not aware of who the Title IX coordinator was, or provided the name and title of a staff member who was not the Title IX coordinator.

Teachers, and several principals and assistant principals expressed that they were not aware of the district's formal grievance procedures. Several principals and staff members expressed requests for more training in the area of how to respond to student-on-student harassment. Board Policy 3216 provides that sexual harassment recognition and prevention is to be included in staff, student, and regular volunteer orientations, in-service training, or other appropriate forums; however, several staff members were unfamiliar with the district's formal complaint process despite reports that an annual training occurs at the beginning of the school year.

The schools employed various programs to address harassment/bullying. Through school assemblies, Camfel Productions¹² provided annual training to students on harassment and bullying. Additionally, staff overwhelmingly reported that school counselors at their respective schools reach out to students at various times throughout the school year to discuss various topics, including harassment and bullying. Some counselors reported that they utilize programs

¹² Camfel Productions' website indicates that it is a non-profit organization that specializes in character education and anti-bullying for students. The company says it provides training to more than two million students nationwide each year.

such as GREAT¹³ and “STEPS to Respect”¹⁴ to teach students about respect for each other and to refrain from harassment. Regarding intervention and prevention strategies, OCR identified an innovative practice at the District high schools in which any student who witnesses harassment or bullying may anonymously report the incident through a Crime Stoppers phone number.

Overall, information contained in the incident reports submitted by the schools indicated that when the schools received reports of sexual harassment, the schools responded by promptly disciplining the offending students. Most of the incidents reviewed by OCR involved name calling or making offensive comments. In one incident, a victim reported that the offending student called him offensive names all year. The District referred the offending student to Saturday school as punishment; however, it is unclear from available evidence whether this punishment was effective in preventing recurrence. Several incidents involved students calling one another “gay”, “lesbian”, or “faggot.” The principal could not recall those incidents involving name calling; and the District did not have information responsive to questions about the victim’s identity at the time of the incident from which OCR could interview additional witnesses. Other reported behaviors included “Pantsing”¹⁵ or exposing genitalia. Several incidents involved inappropriate touching, including many instances of male students impermissibly touching female students in the breasts and buttocks. For instance, in one of the reported incidents of sexual harassment in the District, a male student at an elementary school repeatedly grabbed the buttocks of two female students, ignoring the protests of the female students. School administrators suspended the offending student for two and a half days for the conduct. Similarly, at a middle school, administrators suspended a male student for reportedly forcing down a female student and kissing her. In addition to suspending the offending student, school administrators counseled the male student against similar behavior and told OCR that the male student did not engage in subsequent similar conduct. In another incident at a high school, a male student reportedly “scooped” a female student’s breasts on at least three occasions. The harassed student told school administrators she did not welcome the offending student’s conduct and had asked him to stop it each time he did it. The incident reports indicated that the male student received a warning. The school administrator, who responded to the incident, when interviewed, could not recall the identity of the harassed student to answer whether the incident recurred. In another incident, at a different high school, a female student reported that a male student repeatedly asked her to give him a “blow job”. The school’s incident reports showed that the offending student received a three-day suspension for the offense. In response to whether the incident recurred, the school administrator could not recall the identity of the harassed student and therefore could not answer whether the incident recurred. At the same high school, a different male student asked a female student on the school bus whether he could kiss her. After she rebuffed his request, the offending male placed his hand on her thigh, and then moved it toward her shoulder and breast. The school administrator told OCR that the harasser had a behavior problem and received a long-term suspension for the conduct; however, here too, the administrator could not identify the female student who was harassed or answer whether

¹³ Gang Resistance Education and Training. This program is essentially designed to help schools prevent gang-related activities. For more information, please see: <http://www.great-online.org/>.

¹⁴ Steps to Respect is a comprehensive program used by several school districts across the country. It has a dual focus on bullying and friendship. It is designed to decrease bullying at schools and help students build more supportive relationships with each other. For more information, see <http://www.cfchildren.org/steps-to-respect.aspx>.

¹⁵ Conduct where a student pulls down another’s pants or shorts.

harassment recurred, when asked whether the student subjected the harassed female to recurring harassment. Students reported incidents of students passing around sexually explicit photos or notes, and a few instances in which students posted sexually offensive messages about others on Facebook. Students stated that they do not always report incidents to adults, because they are afraid of being called a “snitch.” They also mentioned that they believe students may sometimes refrain from reporting because of fear of retaliation.

The number of incidents of harassment reported during the timeframe of OCR’s review raises concerns about whether steps taken by the schools are reasonably calculated to prevent the harassment from recurring.¹⁶ This is further underscored by the fact that in several instances, disciplinarians could not identify several of the harassed students; therefore, disciplinarians could not confirm whether or not the reported incidents of harassment recurred following the respective reports and apparent disciplinary actions. The lack of information regarding victims in these instances also limited the District’s ability to report to OCR whether the disciplinary action taken was effective in resolving the reported behaviors and preventing recurrence. The inability to recall the identities of the harassed students also raises the question of whether appropriate steps, besides discipline, were taken to remedy the effects of harassment on the harassed students. Additionally, it is uncertain whether the administrators notified the unidentified harassed students of the outcomes of the respective investigations. OCR does not have sufficient information to determine the extent of any hostile environment at any of the schools, or whether school administrators have responded with prompt and effective steps to address any hostile environment.

Responses to Incidents of Racial Harassment

Overall, information contained in the incident reports submitted by the schools indicated that when the schools received reports of racial harassment, the schools responded by promptly disciplining the offending students. There were relatively few reported incidents of racial harassment at these schools between 2008 and 2013.

OCR identified 36 reported incidents at these schools collectively, with the vast majority being incidents of name-calling. The majority of the name-calling involved negative slurs and references to African American students, such as “nigger”, “chocolate”, and “blackie”. In one incident, a white male student received detention when he called a female student a “Mexican rat.” In another incident, a white male student received detention when he said that Mexicans were stupid and lazy. A female student had a conference when she called a male peer, “gringo,” and “white boy.” In another incident, the offending student received a noon/recess detention when he saw Chinese writing on the board and began to squint his eyes in a racially offensive manner. One teacher reported that someone wrote on the board: ““I have a [sic] AK-47. Don't tell anybody. I hate black people.” The teacher said he did not see the person who wrote it. The

¹⁶ There were 62 reported incidents of sexual harassment at Martin Luther King, Jr. Elementary School between 2008 and 2011; 22 at Gilbert Elementary School between 2011 and 2013; 32 at Whitney Elementary School between 2011 and 2013; 46 at Hoover Elementary School between 2008 and 2011; 30 at Adams Elementary School between 2011 and 2013; 28 at Barge Lincoln Elementary School between 2011 and 2013; 53 at Wilson Middle School between 2010 and 2013; 72 at Lewis and Clark Middle School between 2008 and 2011; 75 at Washington Middle School between 2011 and 2013; 31 at Eisenhower High School between 2011 and 2013; and, 19 at Davis High School between 2011 and 2013.

referral did not elicit action from school administrators. School administrators reported that such a referral without a named offender documents an incident, but does not require administrative action. The discipline imposed included warnings, detentions, and several one-day suspensions. The most severe sanction was imposed on a middle school student who, in June 2013, made “racial remarks”, including negative comments about a student’s mother. The sanction was a 4.5 day suspension. Due to insufficient record-keeping, OCR does not have sufficient information to determine the extent of any hostile environment, or whether school administrators have responded with prompt and effective steps to address any hostile environment.

Responses to Incidents of Disability Harassment

Overall, information contained in the incident reports submitted by the schools indicated that when the schools received reports of disability harassment, the schools responded by promptly disciplining the offending students. There were relatively few reported incidents of disability harassment at these District schools between 2008 and 2013.

OCR identified 17 total incidents of reported disability harassment, the vast majority being incidents of name-calling. Although a few of the reports of name-calling listed the derogatory comment, such as “retard”, the majority of reports did not document the actual behavior or comments made; rather, the documents referred to the behavior as “making fun of”, “picking on” or “teasing” disabled students. The discipline imposed included warnings, detentions, and counseling. Some incidents involved making disability-related comments or making fun of a student because he or she participated in special education classes. One incident involved a student throwing on the playground the glasses of a student who has a disability. Another incident involved the offending male student making fun of another student’s speech patterns; the offending student was counseled and given an afternoon detention and two recess detentions. One incident involved the offending male student making fun of a deaf and blind student by imitating and mocking that student; the offending student was counseled. One male student was sent home when he made fun of a peer who was having a seizure. Another offending student teased another student for wearing a knee brace and received a noon/recess detention; however, the Assistant Principal said she did not quite remember the incident. Three students received warnings for picking on a student with a lazy eye. There was also a one-day suspension and an expulsion reported as sanctions; the expelled student had several earlier discipline incidents and was expelled after he pulled down the pants of a student who has a disability. Due to insufficient record-keeping, OCR does not have sufficient information to determine the extent of any hostile environment, or whether school administrators have responded with prompt and effective steps to address any hostile environment.

Conclusion

As stated above, during the course of the investigation, OCR found identified violations of the regulations implementing Title IX, Section 504 and Title II because the District has not provided adequate notice with regard to the name, title and contact information of the persons designated to coordinate the District’s compliance with the regulations under Section 504, Title II and Title IX; failed to provide a notice of non-discrimination in a form and format required by the regulations; and does not have a grievance procedure that provides for the prompt and equitable

resolution of student and employee complaints alleging any action prohibited by the regulations. Prior to completing the investigation of the remaining areas of this review, the District expressed its interest in resolving all identified compliance concerns and any remaining issues without further investigation. Accordingly, on January 12, 2015, OCR entered into a resolution agreement with the District to resolve the compliance review.

The resolution agreement will require the District to: (1) promptly investigate all incidents of harassment based on race, color, national origin, sex and disability of which it has notice; and take appropriate action to end the harassment, prevent its recurrence, and remedy its effects if appropriate; (2) hire or assign an equity consultant to assist with the District's implementation of the agreement; (3) create non-discrimination and anti-harassment statements that comply with Title IX, Section 504 and Title II; and provide effective notice of the statement to students, parents, employees and third parties; (4) establish grievance procedures compliant with Title IX, Section 504 and Title II; and provide effective notice of the procedures to students, parents, employees and third parties; (5) designate compliance coordinators and provide effective notice of the coordinators to students, parents, employees and third parties; (6) conduct annual school climate checks related to harassment incidents; (7) create a task force to suggest strategies for dealing with harassment in schools; (8) train staff and coordinators on obligations related to identifying, reporting, investigating, and taking appropriate action in response to harassment incidents; (9) train students on recognizing and reporting harassment; (10) create a system for documenting, investigating, record-keeping and tracking complaints and incidents of harassment; and, (11) create a system for monitoring the effectiveness of its response to harassment and for conducting a self-assessment.

OCR will monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

Under the Freedom of Information Act, it may be necessary to release this letter 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Kwame Amoateng, OCR attorney by telephone at 206-607-1602 or by e-mail at kwame.amoateng@ed.gov.

Sincerely,

/ s / Barbara Wery for

Sukien Luu
Supervising Attorney/Team Leader

cc: Honorable Randy Dorn
Superintendent of Public Instruction