



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 1, 2017

Chris Gdowski, Superintendent
Adams County School District 12
1500 East 128th Avenue
Thornton, Colorado 80241-2602

Re: Adams County School District 12
Case Number: 08-17-1353

Dear Superintendent Gdowski:

We write to advise you of the resolution of a complaint that was filed with our office against Adams County School District 12 ("the District") and Stargate School ("Stargate"), collectively "the Recipients." The Complainant alleged that Stargate failed to promptly and equitably respond to [REDACTED]

We investigated the complaint pursuant to Title IX of the Education Amendments of 1972 ("Title IX"), and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education ("the Department"). As a recipient of Federal financial assistance from the Department, the Recipients are subject to Title IX and its implementing regulations.

We found sufficient evidence to conclude that Stargate discriminated as alleged. Additionally, in the course of our investigation, we identified violations of the procedural requirements of Title IX. The reasons for our findings are set forth below. Upon being advised of these findings, the Recipients voluntarily agreed to enter into a resolution agreement to resolve the violations. A signed copy of the agreement is enclosed with this letter.

Complainant's Allegation

I. Legal Standards

The regulations implementing Title IX, at 34 C.F.R. Section 106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. School districts are responsible under Title IX and its regulations for providing students with a nondiscriminatory educational

During the course of our investigation, we learned that [REDACTED]

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environment. 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. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Title IX and its regulations, once a school district has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. Schools are responsible for redressing a hostile environment that occurs on campus,

The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A district may violate Title IX and its regulations if: (1) the district knew or reasonably should have known about the harassment; and (2) the district failed 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 district to take action.

The Office for Civil Rights (OCR) evaluates the appropriateness of a district's responsive action by assessing whether its action was prompt, thorough, and effective. What constitutes a reasonable response to harassment differs depending upon the circumstances. However, in all cases, the district must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. If harassment is found, the district must take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The district's response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. Such actions may include special training or other interventions, the dissemination of information, new policies, or other steps designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also must take steps to prevent any retaliation against the student who made the complaint or those who provided information.

II. Investigation

Our investigation focused on obtaining the evidence necessary to determine whether the Recipients complied with the legal standards articulated in Section I above. Specifically, our investigation involved requesting and reviewing extensive documents and information from the Complainant, the District, and Stargate. We visited Stargate to interview

Additionally, we interviewed [REDACTED]
[REDACTED] the events in question in this case. We also interviewed the [REDACTED]
[REDACTED] and former [REDACTED]
[REDACTED] Finally, we interviewed [REDACTED]
[REDACTED]

III. Evidentiary Standards

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion as alleged.

IV. Evidence

Unless otherwise noted, the following facts are undisputed.

a. Background

Stargate is a charter school serving students in kindergarten through eleventh grade. It is physically located in and authorized by the District [REDACTED] of [REDACTED] students

[REDACTED]
[REDACTED]
[REDACTED] is the Complainant.

According to statements made in [REDACTED]
[REDACTED]
[REDACTED]

b. Notice of Sexual Harassment to Stargate

[REDACTED]
[REDACTED]

² During the 2016-2017 school year, Stargate served students in grades six through 11; twelfth grade was added for the 2017-2018 school year.

³ According to the Complainant, [REDACTED]

[REDACTED] notified the [REDACTED] of the allegation.⁴

c. Stargate's Investigation of the Reported Sexual Harassment

On [REDACTED] [REDACTED] contacted [REDACTED] to inform [REDACTED] about what had [REDACTED] and to request additional information.⁵ [REDACTED] said that [REDACTED] was aware of the [REDACTED]

[REDACTED] informed the [REDACTED] about his conversation with [REDACTED] met with [REDACTED] and disclosed the [REDACTED] began to provide details, but the [REDACTED] terminated the interview when [REDACTED] determined that [REDACTED] and [REDACTED]

[REDACTED] met with [REDACTED] According to Stargate, during the meeting, [REDACTED] informed them that (a) [REDACTED] re [REDACTED]

[REDACTED]

[REDACTED] told OCR that [REDACTED]

⁵ Stargate staff explained to OCR that they did not reach out to the Complainant because they had always communicated with [REDACTED] and they did not have an existing relationship with the Complainant. According to [REDACTED] Complainant's job to communicate with each other. According to the Complainant, [REDACTED] was unaware of the [REDACTED] prior to [REDACTED] and interview the following day.

⁶ Stargate's first narrative response to OCR indicated that the [REDACTED]

[REDACTED]

V. Analysis

Whether or not [REDACTED] files a complaint of alleged [REDACTED] otherwise asks the school to take action, where the school knows or reasonably should know of an incident of [REDACTED] the school must take steps to understand what occurred (i.e., appropriately investigate) and to respond appropriately. When [REDACTED] the school is responsible for investigating to determine if a hostile environment exists [REDACTED] [REDACTED], and redressing the hostile environment when it exists.

a. Notice

[REDACTED], upon receiving the aforementioned [REDACTED] the [REDACTED] was clearly on notice of alleged [REDACTED] as were other responsible employees after the [REDACTED] notified them on the same day.

b. Investigation

After becoming aware of the alleged [REDACTED] Stargate was required to conduct an investigation to determine if a hostile environment existed on campus [REDACTED] involved. "The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, [REDACTED] the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial."¹⁵

Here, Stargate's investigation was impartial and began promptly. [REDACTED]

[REDACTED]

Stargate's investigation was not, however, thorough. Stargate provided no evidence demonstrating that it investigated whether a hostile environment existed [REDACTED]

[REDACTED]

¹⁵ Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, U.S. Dept. of Educ., Office for Civ. Rights, Jan. 2001, p. 15.

¹⁶ OCR is unclear as to why it took four days for [REDACTED]

[REDACTED] or
Stargate was required, under Title IX, to investigate whether a hostile environment
existed.

c. Interim Measures

It may be appropriate for a school to take interim measures during the investigation of alleged sexual harassment.¹⁷ "Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations."¹⁸

[REDACTED]

Stargate failed to promptly put interim measures in place. Instead, over a week after the allegation was reported to the School, it appears that no measures had been put into place. [REDACTED]

[REDACTED]

Stargate did put some interim safety measures into place. However, the safety measures were problematic in three ways. First, some of the measures trickled into place only after [REDACTED]

¹⁷ See *id.* at 16.

¹⁸ *Q&A on Campus Sexual Misconduct*, U.S. Dept. of Ed., Office for Civ. Rights, Sept. 2017, p. 2.

[REDACTED]

In other words, they were reactive instead of proactive. For example, [REDACTED]

Second, the [REDACTED] were not adequately communicated to necessary individuals.

[REDACTED]

In short, during interviews with OCR, Stargate staff did not demonstrate any consistent understanding of whether [REDACTED] what [REDACTED] were in place, or when [REDACTED] were in place.

Third, the [REDACTED] were inadequate. According to Stargate, they put the following measures into place in between becoming aware of the [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Stargate could have, but did not, take additional [REDACTED]

Notably, according to the [REDACTED]

²¹ According to [REDACTED] did not [REDACTED] until a week or so before the [REDACTED]

[REDACTED]

Stargate again argues that it could not put more [REDACTED]

Again, this is not an adequate defense. Title IX obligations for recipients exist separate and apart from [REDACTED]

During interviews with OCR, the [REDACTED] - both of whom possess extensive experience with student supports and interventions - stressed that Stargate should have immediately [REDACTED]

Notably, no one from Stargate articulated to OCR why a [REDACTED]

Finally, multiple Stargate staff members explained the delayed, limited [REDACTED] by saying that they wanted to avoid [REDACTED]. Yet, no one was able to explain what [REDACTED] would have [REDACTED]

d. Hostile Environment

"[W]hen sexual misconduct is so severe, persistent, or pervasive as to deny or limit a student's ability to participate in or benefit from the school's programs or activities, a hostile environment exists and the school must respond."²² "OCR considers a variety of related factors to determine if a hostile environment has been created. ... OCR considers the conduct from both a subjective and objective perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances[.]"²³

In the present case, on one hand, the [REDACTED] prior to [REDACTED] at Stargate; there is no evidence that [REDACTED] there is no evidence that [REDACTED]. On the other hand, the [REDACTED]

Given the totality of the circumstances - especially the [REDACTED] the [REDACTED] - we find that a hostile environment existed [REDACTED] at Stargate.

²² Q&A on Campus Sexual Misconduct, U.S. Dept. of Educ., Office for Civ. Rights, Sept. 2017, p. 1.

²³ Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, U.S. Dept. of Educ., Office for Civ. Rights, Jan. 2001, p. 5.

e. Stargate's Response to the Hostile Environment

Once a hostile environment should have been known to have existed, Stargate was obligated to "take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again."²⁴ Additionally, Stargate must have taken effective steps to "prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses."²⁵ "What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances."²⁶

By the time Stargate staff should have been aware that a hostile environment existed (i.e., at the [redacted] continued in the form of a hostile environment. Immediately after [redacted] Stargate took steps to eliminate the hostile environment by [redacted]. Then, approximately two weeks after the District was notified [redacted] a week after the District and Stargate were notified that [redacted] and a couple of days [redacted] the Recipients [redacted]. The District put strict safety measures in place [redacted].

[redacted] Yet, Stargate did not take adequate additional measures to eliminate the hostile environment that remained. For instance, Stargate did not offer [redacted].

[redacted] In fact, Stargate contributed to the hostile environment by [redacted].

Finally, Stargate did not take any steps to prevent retaliation against [redacted]. "At a minimum," preventing retaliation "includes making sure that the [redacted] know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation."²⁷ Even after [redacted] (no later than [redacted]) that [redacted] reported the [redacted], and that the report

²⁴ *Id.* at 15.

²⁵ *Id.* at 17.

²⁶ *Id.* at 15.

²⁷ *Id.* at 17.

triggered a series of events that led to [REDACTED] Stargate did not advise [REDACTED] regarding retaliation.

Title IX Procedural Violations

Title IX Coordinator: Each recipient must designate at least one Title IX coordinator.²⁸ During the 2016-2017 school year, Stargate did not have a Title IX coordinator,²⁹ nor was there an arrangement to use the District's Title IX coordinator.³⁰ In this case, Stargate staff did not consult the District's Title IX coordinator.³¹

Title IX Training: Additionally, "schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials."³² During interviews with OCR, numerous staff members reported that Stargate staff were not trained on Title IX.

Title IX Grievance Procedures: Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex. Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.³³ According to Stargate, it "follows" the District's policies and "incorporates such policies into its Community Handbook." Page two of the *Community Handbook* reads, "Stargate School is committed to a policy of nondiscrimination/harassment in relation to race, color, sex, religion, creed, national origin, marital status, sexual orientation and disability. Adams 12 Five Star Schools Superintendent's Policy 8400 establishes guidelines related to allegations of discrimination and/or harassment of or by students or staff." The District's Policy 8400 includes a non-discrimination statement and grievance procedures.

In reviewing the documentation, information, and facts that we uncovered in our investigation, OCR determined that the weight of the evidence supports conclusions that Stargate violated Title IX by: (1) failing to adequately investigate and redress the school-based effects and hostile environment resulting from the reported sexual harassment; (2) failing to implement adequate interim safety measures in a timely manner; (3) failing to eliminate the hostile environment and safeguard against retaliation; (4) failing to have a Title IX coordinator; and (5) failing to ensure that the necessary staff were trained on Title IX.

²⁸ See 34 C.F.R. § 106.8(a).

²⁹ A variety of Stargate staff members — [REDACTED] confirmed this fact during interviews with OCR.

³⁰ The District wrote to OCR, "The District does not know ... who the School is utilizing as its coordinator for Title IX compliance purposes."

³¹ Stargate wrote to OCR, "Stargate now understands that it is the District's position that the School should employ its own Title IX coordinator, and the School will be creating a position for its own compliance officer."

³² *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. Dept. of Educ., Office for Civ. Rights, Jan. 2001, p. 13.

³³ See 34 C.F.R. § 106.8(b); *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. Dept. of Educ., Office for Civ. Rights, Jan. 2001, p. 19.

We thank the Recipients for voluntarily entering into an agreement with OCR to resolve these issues. OCR is closing the investigative phase of this case effective the date of this letter.

The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the Recipients demonstrating that the terms of the Agreement have been fulfilled. We will provide the Recipients with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The monitoring phase will be completed when OCR determines that the Recipients have fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations and Title IX procedural violations will be resolved consistent with the requirements of Title IX and its implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the Recipients, copied to the Complainant, stating that this case is closed. If the Recipients fail to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issues listed previously and should not be interpreted as a determination of the Recipients' compliance or noncompliance with Title IX or any other federal law in any other respect.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that the Recipients may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the individual 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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you and your staff extended to us during the investigation of this case. If you have any questions, please contact the attorneys assigned to the case, Jason Langberg, at 303-844-6299 or Jason.Langberg@ed.gov, and Sarah Morris, at 303-844-3682 or Sarah.Morris@ed.gov.

Sincerely,



**Angela Martinez-Gonzalez
Supervisory General Attorney**

Enclosure: Resolution Agreement

**cc: Walt Kramarz, Deputy General Counsel, Adams County School District 12
Josh Cochran, Executive Director, Stargate School
Amy Miletich, Miletich PC, Attorney for Stargate School
Dr. Katy Anthes, Colorado Commissioner of Education (w/o enclosures)**