



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 27, 2018

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

Re: Adams County School District 12
Case Number: 08-17-1374

Dear Superintendent Gdowski:

This letter updates the reporting requirements for the December 13, 2017 Resolution Agreement signed by Adams County School District 12 (District) and Stargate School (School) (collectively, Recipients). We have completed our review of the School's documentation received on January 23, 29 and 30, February 7 and 13, and March 12 and 19, 2018 on its actions to ensure compliance with Title IX of the Education Amendments of 1972 and its implementing regulation at 34 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.

Our review and analysis of the Recipients' progress in implementing the Agreement is summarized below. The relevant terms of the Agreement are provided below, in italics, for your reference.

1. *The School will create or revise a written procedure through which complaints of sex discrimination may be filed, which will include, at a minimum:*
 - a. *an explanation (1) that discrimination includes harassment and (2) what sexual harassment is, including a definition of a hostile environment and examples of sexual harassment;*
 - b. *notice of the procedure, including where to file complaints;*
 - c. *application of the procedure to complaints alleging discrimination by staff, other students, or third parties;*
 - d. *a statement that the School is responsible for determining whether a hostile environment on the basis of sex exists regardless of whether a formal complaint is filed, provided the School knows or should have known of the underlying behavior;*
 - e. *written acknowledgment of complaints;*
 - f. *adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;*
 - g. *provisions for a prompt investigation of complaints, including designated and reasonably prompt timeframes for major stages of the complaint process;*
 - h. *written notice to the parties of the outcome of the complaint;*

- i. *provisions for a response that is reasonably calculated to end any harassment, remedy its effects, and prevent recurrence, including discipline, where appropriate, of any staff or students found to have engaged in harassment;*
- j. *adequate record-keeping, including a reference to, including as an appendix, the Title IX Complaint Form, developed pursuant to Term III of the Resolution Agreement in OCR Case No. 08-17-1353;*
- k. *effective notice of the School's Title IX Coordinator designated pursuant to Term I of the Resolution Agreement in OCR Case No. 08-17-1353;*
- l. *an explanation that all staff are responsible employees obligated to report alleged sexual harassment to appropriate school officials, including the Title IX Coordinator; and*
- m. *that the District will be notified of any complaints filed pursuant to the School's procedure.*

REPORTING REQUIREMENT A: *By January 31, 2018, the School will submit, for OCR review and approval, its draft procedure. The School will fully and promptly address any comments by OCR as to the procedure and will continue to modify the procedure until it receives final OCR approval.*

REPORTING REQUIREMENT B: *Within 15 days of OCR's approval of the procedure, the School will disseminate the procedure to students, parents, and staff in English and in Spanish. Within 30 days of OCR's approval of the procedure, the School will provide OCR documentation of its efforts to disseminate the procedure, including via email; any websites used to disseminate information to students, parents, or staff; and the School's Community Handbook.*

The Title IX implementing regulations, at 34 C.F.R. §106.8(b), require a recipient to adopt and publish grievance procedures providing for a prompt and equitable resolution of student and employee complaints alleging sex discrimination. OCR examines a number of factors in evaluating whether a school'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 students, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

With respect to these factors, OCR determined:

- notice of the procedure to students, parents of elementary and secondary students, and employees, including where to file complaints: the procedure sufficiently identifies where complaints may be filed (with an administrator, counselor, teacher, or the school's Title IX Coordinator, whose contact information is provided). OCR has no compliance concerns with respect to notice of the procedure at this point, but notes that this issue will also be separately analyzed pursuant to Reporting Requirement 1(B).

- application of the procedure to complaints alleging discrimination by employees, other students, or third parties: Page 4 states that complaints may allege discrimination by “the school, another student, or any school employee.” Please add that complaints may be filed relating to third parties.
- adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence: Page 5 lists the types of information that may be considered in investigations, which appear to be excerpted from OCR’s 2001 Sexual Harassment Guidance at page 18. OCR has some concerns about how this language was adapted. Therefore:
 - as the guidance does, to “d. evidence of the aggrieved individual and/or alleged victim’s reaction or change in behavior following the alleged prohibited conduct,” please add “However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment.”
 - as the guidance does, to “e. evidence about whether the alleged victim and/or aggrieved individual took action to protest the conduct,” please add “However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.”
 - to “f. evidence and witness statements or testimony presented by the parties involved.” Please clarify that the parties are not required to provide witness statements. We suggest revising “witness statements” to “witnesses.”
- designated and reasonably prompt timeframes for major stages of the complaint process: acceptable timeframes are set for the major stages of the process, with the exception of one issue. Page 4 provides for complaints made to others to be promptly forwarded to the compliance officer, who then is to confer with the aggrieved party within 10 days of receipt. Please either set a deadline for forwarding the complaint to the Compliance Officer, or revise the conferral to be within x days of the complaint being lodged. Please make a similar change on page 6, which sets a deadline of 45 days from receipt to complete the investigation.
- notice to the parties of the outcome of the complaint: this is sufficiently established, as written notice of the outcome to the parties is provided for at page 6;
- an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects: Page 2 states that the school will take steps to investigate, “to end unlawful behavior, to prevent the recurrence of such behavior and to prevent retaliation against the individual’s [sic]) who files the complaint and/or any person who participates in the investigation.” Please add words to the effect that the school will also correct the effects of any discrimination.

OCR had the following additional comments:

- Page 1: please add “age” to the list of protected classes/clarify that age discrimination is prohibited beyond simply employment. In addition to what appears to be a reference to the Age Discrimination in Employment Act, the Age Discrimination Act of 1975 and its implementing regulation at 34 C.F.R. Part 110 prohibit discrimination on the basis of age in programs or activities that receive Federal financial assistance from the U.S. Department of Education.

- Page 1 states, “This policy shall be used to address all concerns regarding unlawful discrimination and harassment, and any related retaliation arising from the filing of any complaint of harassment.” Please revise “any related retaliation arising from the filing of any complaint of harassment” to words to the effect of “retaliation for having engaged in activity protected by the civil rights laws that prohibit discrimination, including harassment.”
- Page 3 defines “Compliance Officer,” but the policy does not identify the compliance officer(s) or contact information for the officer(s). Please either identify the officer(s) with contact information in the policy or add a reference to location(s) where the officer(s) are identified with contact information. More information on what information to provide is available at <https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.
- Page 4 references the “School’s approved form.” Please append this form(s), including the Title IX Complaint Form, developed pursuant to Term III of the Resolution Agreement in OCR Case No. 08-17-1353.
- Page 6 contains a “Section 504 Hearing procedure.” As Section 504 is not at issue in this case, OCR is not reviewing, and is neither approving nor denying, this procedure.
- Page 7 lists a toll-free number and TTY number for OCR, which are not correct. Please revise to the correct numbers, Telephone: 800-421-3481, TDD: 800-877-8339.
 - Rather than indicating “English/Spanish,” please add that language assistance is available.
 - Please correct OCR’s email address to “OCR.Denver@ed.gov” (the existing address omits the period).
 - Given this, the School may wish to check the other agencies’ contact information. For example, the EEOC’s email address is listed as “egov.eeoc.gov.eas.”
- OCR asks that revisions related to retaliation be made in several places.
 - In several places, the policy indicates that it applies to complaints of “discrimination or harassment” (e.g., Page 2, Page 4). We ask that the policy make clear throughout that it applies to complaints of retaliation as well.
 - In several places, the policy circumscribes retaliation to “retaliation arising from the filing of any complaint of harassment” (page 1) or “retaliation against anyone who makes a report or participates in an investigation” (page 5). Please revise to indicate that retaliation is prohibited, not just in response to filing complaints or participating in investigations, but also to any activities protected by the civil rights laws make discrimination illegal.

Therefore, in the School’s next monitoring report, **due within 30 days of this letter**, please provide a revised draft of this policy.

2. *The School will issue and publish the School’s OCR-approved policy, pursuant to 34 C.F.R. § 106.9, against sex discrimination to all students, parents, and staff.*

REPORTING REQUIREMENT A: *By January 31, 2018, the School will submit, for OCR review and approval, the document that it intends to issue and publish. The School will fully and promptly address any comments by OCR as to the document and will continue to modify the document until it receives final OCR approval.*

REPORTING REQUIREMENT B: *Within 15 days of OCR's approval of the procedure required in Term 1, the School will disseminate the procedure to students, parents, and staff in English and in Spanish. Within 30 days of OCR's approval of the procedure, the School will provide OCR documentation of its efforts to disseminate the procedure, including via email; any websites used to disseminate information to students, parents, or staff; and the School's Community Handbook.*

The School provided its "Title IX Nondiscrimination Policy," which is lengthy and somewhat redundant to the proposed grievance procedure pursuant to Term 1. For clarity and efficiency, OCR suggests either consolidating this policy with the grievance procedure pursuant to Term 1, or reducing its content to something closer to the concepts described in OCR's publication on notices of nondiscrimination, available at <https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

To the extent the School wishes to retain two policies, we offer the following comments on the Title IX Nondiscrimination Policy:

- The last line on Page 1 is cut off ("1. Submission to such conduct is made either explicitly or implicitly a term or condition of an"). Please complete this sentence.
- Page 2 indicates, appropriately, that complaints may also be filed with the "U.S. Equal Opportunity Commission, U.S. Department of Education, and Office for Civil Rights, or Colorado Civil Rights Commission." Please provide contact information for these agencies and correct OCR's name to U.S. Department of Education Office for Civil Rights. The School may also wish to add, for example, a short parenthetical explaining the jurisdiction of each agency (e.g., "U.S. Equal Opportunity Commission (employment)").
- Pages 2 and 3 require a "prompt inquiry," but do not define a deadline for what will be considered "prompt." Therefore, we ask that the School set a deadline.
- Page 2-3 seems to suggest that "the investigator should obtain the following information from the complainant: . . . witness statements." Please clarify that the complainant is not obligated to provide the statements him- or herself.
- Page 3 indicates, appropriately, that the School must "correct [a hostile environment's] effects on the complaining individual." The obligation is broader and extends to any hostile environment created or individual affected. Therefore, we ask that the School delete "on the complaining individual."
- The policy suggests but does not expressly state that it applies to complaints alleging discrimination by employees, other students, or third parties. Therefore, we ask that the School clarify the policy's application.
- The policy appears to contain a number of employment-related non-sequiturs, such as:
 - Page 1 indicates that "This policy extends to all areas of employment . . ." This may create confusion that the policy applies only to employment to the exclusion of other areas. Therefore, the School may wish to add that the policy extends to all programs, services, and activities.
 - Page 2 lists as an example of sexually harassing behavior "display in the workplace of sexually suggestive objects or pictures," which is certainly accurate but display anywhere at the School could apply. Therefore, the School may wish to clarify this language.

- The policy does not address the School's obligation to address the effects of off-campus harassment that occur at School. The proposed grievance procedure, by contrast, states, "All Stargate employees and students share the responsibility to ensure that harassment does not occur at school, on Stargate property, at any school-sanctioned activity or event, or off school property when such conduct has a nexus to the school, or any curricular or non-curricular activity or event." We ask that such language be included in this policy.

Therefore, in the School's next monitoring report, **due within 30 days of this letter**, please provide either a consolidated or revised draft of the Title IX Nondiscrimination Policy.

4. *The School will provide training to all staff about the prohibition against sex discrimination, including, at a minimum and in addition to the topics required to be addressed pursuant to Term II of the Resolution Agreement in 08-17-1374:*
 - a. *The procedure developed pursuant to Term I;*
 - b. *all staff's obligation to report sexual harassment to appropriate school officials, including the Title IX Coordinator;*
 - c. *the person(s) to whom alleged sexual harassment should be reported; and*
 - d. *making sure that any students and parents who report harassment know how to report any subsequent problems.*

REPORTING REQUIREMENT A: Within 90 days of this Agreement, the School will provide OCR, for OCR's approval, its draft training materials; identify who will be providing the training, by name, title, and qualifications; and provide a list of personnel required to participate in the training, by name and title. The School will fully and promptly address any comments by OCR and will continue to modify the materials, trainers, or personnel list until it receives final OCR approval.

REPORTING REQUIREMENT B: Within 60 days of OCR's approval, the School will provide documentation demonstrating that the training was provided and a copy of the training sign-in sheets.

The School provided its proposed training materials. OCR reviewed the materials for compliance with this Resolution Agreement and has no compliance concerns with respect to this Resolution Agreement. OCR also reviewed the proposed trainer (the School's outside counsel) and list of personnel required to participate, and has no compliance concerns as to either. Therefore, based on the information provided, OCR has determined that the School has complied with, and no further monitoring submissions are due for, Reporting Requirement 4(A) of the Agreement. We look forward to hearing from the School with respect to Reporting Requirement 4(B) of the Agreement. We understand that the training materials will be used to fulfill similar reporting requirements of other OCR Resolution Agreement(s) and the timing of the delivery of the training will be affected by the date of OCR approval in those case(s).

5. *The School will convene a school assembly for secondary students to discuss the School's prohibition on sexual harassment, and how to recognize and report sexual harassment, including but not limited to through the complaint procedure developed pursuant to Term I.*

REPORTING REQUIREMENT A: *By January 31, 2018, the School will submit, for OCR's review and approval: (1) a summary of the proposed school assembly and any materials it proposes to use at the assembly; and (2) the identity, and qualifications, of who will be moderating the assembly. The School will fully and promptly address any comments by OCR and will continue to modify the materials and moderator(s) until it receives final OCR approval.*

REPORTING REQUIREMENT B: *Within 30 days of OCR's approval, the School will submit, for OCR's approval, documentation demonstrating that the assembly (1) was held, and (2) addressed the School's prohibition on sexual harassment, and how to recognize and report sexual harassment, including but not limited to through the compliance procedure developed pursuant to Term 1.*

The School provided its summary of the proposed school assembly and the identity and qualifications of its proposed moderators. The School has not provided proposed materials. As to the moderators, the School proposed its male secondary school counselor and male school resource officer. OCR is unable to make a determination as to whether the submitted information will suffice to comply with the Resolution Agreement. For example, the summary indicates that the assembly will address the "definition" of sexual harassment, including "what's the problem? Where does this happen? Who is this happening to?"; it also indicates that "equipping/advocating/confronting" will be addressed.

The summary also indicates that the "Slogan to be used community-wide" is "Do you REALLY know your audience?" Related questions to "Do you REALLY know your audience?" are proposed to be "i) What one person says or does maybe offensive if you say or do it, ii) What you say today could be held against you later, iii) Perception can be someone else's reality regardless of intention." While the subjective effect of sexual harassment is certainly relevant, OCR is potentially concerned that this framing may fail to convey that sexual harassment is inappropriate – and in many cases unlawful – in and of itself, or may suggest that the targets of sexual harassment are the issue, rather than those who engage in sexual harassment.

The School also indicated that it may utilize an organization called "Parenting Safe Children" to provide follow up training for staff, students and community members and that it would provide more information on this training.

Therefore, in the School's next monitoring report, **due within 30 days of this letter**, please provide (1) a more detailed summary of the proposed school assembly, (2) any materials proposed to be used at the assembly, and (3) to the extent the School intends to use it to fulfill this Term of the Resolution Agreement, more information on the forthcoming "Parenting Safe Children" presentation.

6. *The School will offer counseling to all students on its high school girls' volleyball team for the Fall 2015 and/or Fall 2016 semesters, explaining that they are welcome to speak with School counseling staff about any inappropriate behavior by their former coach.*

REPORTING REQUIREMENT: *Within 30 days of this agreement, the School will submit, for OCR's approval, a statement that it has complied with this term and any documents relating to its offer, the names of all students to whom this offer was made, whether each student accepted or declined the offer, and the duration and staff assigned to each student who accepts the offer.*

The School provided the names of all students on the volleyball team for the Fall 2015 and Fall 2016 semesters. OCR cross-checked these names with the names the School provided in its initial data response at Exhibit 15 and confirmed, after clarification from the School regarding one student erroneously included on the initial list, that the lists aligned. The School provided documentation that on January 10, 2018, the Executive Director emailed students that the School indicated were still enrolled in the School, copying the two secondary school counselors. The School also represented that one of the secondary school counselors made phone calls to the three students who the School indicated participated on the team but were no longer enrolled at the School. Finally, the School indicated that no follow up was made for one student, because she was an international student who has since returned to her home country. The School provided emails and voicemails and indicated that all students ultimately declined the offer.

OCR does note that many of the allegations in this case and others concurrently investigated arose from the Executive Director's proclivity towards oral communications rather than written, and the ensuing lack of documentation related to serious matters such as alleged sexual harassment. That proclivity appears to have continued through this offer of counseling, as some parents responded to the initial email via email, and the Executive Director responded by phone or asking those parents to phone him. While OCR does not find that these actions fail to comply with the Resolution Agreement in this instance regarding such communication with parents in this situation, as technical assistance, OCR suggests that in general the School strongly consider which communications need to be in writing or otherwise documented.

Therefore, based on the information provided, OCR has determined that the School has complied with Term 6 of the Agreement. No further monitoring submissions are due for Term 6.

Conclusion

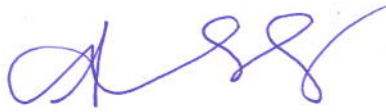
We look forward to hearing from you with additional monitoring reports as those reports come due.

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.

We thank the Recipients for their commitment to completing the terms of the Agreement. If you have any questions, please contact the attorneys assigned to the case, Sarah Morris, at 303-844-3682 or Sarah.Morris@ed.gov or Jason Langberg, at 303-844-6299 or Jason.Langberg@ed.gov.

Sincerely,



Angela Martinez-Gonzalez
Supervisory General Attorney

cc: Walt Kramarz, Deputy General Counsel, Adams County School District 12
Josh Cochran, Executive Director, Stargate School
Jan Kulmann, President, Stargate Governance Board
Tony Dyl, Kutz & Bethke LLC, counsel for Stargate School
Complainant