

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Telephone:

Facsimile:

Email: @ed.gov

ADMINISTRATIVE COMPLAINT

COMPLAINANTS

(referred to below as “Complainant”)

(referred to below as “Complainant’s mother”)

Please d

PRELIMINARY STATEMENT

1. This Complaint is filed pursuant to Title IX of the Education Amendments of 1972, 20

her in a disciplinary school with her attacker and did not allow her to leave the program until March 1, 2011. The District's response to Complainant from the time she reported the sexual assault to the time she was allowed to leave the disciplinary program on March 1 constitutes a continuous course of discriminatory conduct that resulted from the District's initial failure to undertake a thorough and independent investigation into her report. To the extent that the agency deems that any of the discriminatory actions took place more than 180 days before the postmark or receipt date of this complaint and were not part of a continuing violation, Complainants request a waiver of the 180-day limit. The complaint could not be filed earlier due to the trauma Complainant experienced as a result of the sexual assault and her placement into the disciplinary program, among other factors.

FACTUAL ALLEGATIONS

7. In December 2010, Complainant was in her senior year at _____ High School. She was a successful student, taking Advanced Placement classes and maintaining an A-B average. She was an active participant in extracurricular activities, including band, Future Farmers of America, Key Club, and Student Council.
8. On December 6, 2010, Complainant was sexually assaulted by another student in the band practice area on school premises.
9. Complainant immediately reported the sexual assault to an assistant band director, _____, who failed to alert her parents, the administration, the police, or anyone else about the assault. Instead, he told her that she should "do what you know you need to do," find her attacker, and ask her attacker "why he was doing what he did."
10. Complainant was distraught and remained at home the next day, December 7.
11. On December 8, Complainant returned to school and reported the sexual assault to assistant band director _____. A female principal named _____ then interviewed Complainant, asking questions such as whether her attacker had penetrated her. At that

interview, because she was quiet when she was brought into the Child Advocacy Center, because she was strong and could have defended herself, and because she had voluntarily entered the band area with her attacker. The parents were shown a video that recorded Complainant and the attacker entering and leaving the area where the assault occurred.

14. Officer _____, who has an office at the school, told them that Complainant would be removed from _____ High School and placed in a Disciplinary Alternative Educational Program (DAEP). Detective _____ also informed them that Complainant was being removed from band and that her mother would no longer be allowed to chaperone school events. Complainant was not present at the December 9 meeting.
15. Complainant's parents were told that she was being put in DAEP because she "had sex on campus." She was never given an opportunity to respond to removal from her school.
16. The following Monday, on December 13, Complainant's mother, on her own initiative, met with Principal _____ ("Principal") of _____ High School. Complainant's mother told the Principal that she wanted to transfer her daughter to _____ High School. She also expressed her shock that the school's procedure of keeping unused rooms locked was not followed. This procedure could have prevented the sexual assault. The Principal responded that he agreed with Complainant's mother "125%" and that he understood why she was seeking the transfer.
17. The Principal did not provide Complainant's parents or Complainant with the opportunity to be heard with regard to the DAEP placement. The Principal also did not inform Complainant's parents that Complainant had the right to file a Title IX complaint, nor did he give her the name of the Title IX coordinator or tell her that a Title IX coordinator existed.
18. Complainant's mother was later informed (the next day or day after) that _____ High School had denied Complainant's transfer request due to her pending placement in DAEP.
19. On December 15 and 16, Complainant's mother delivered letters to the Principal and District Superintendent _____

22. At the January 4 meeting, the Principal stated that the school deals on a yearly basis with incidents similar to those at issue here.
23. Complainant's mother was told by the school's attorney (through her attorneys) that Complainant could herself be accused of sexual assault because she is one year older than her attacker.
24. On January 5, 2011, Complainant began attending the same DAEP as the student who assaulted her.
25. While at DAEP, Complainant was forced to see her attacker at least once a day in order to get to her classroom and even to go to the bathroom. Complainant would have had to see her attacker less frequently had the District arranged the room a

LEGAL ALLEGATIONS

A. Legal Framework

32. Title IX provides in relevant part that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a).

33. The United States Supreme Court has recognized that a funding recipient's inappropriate response to a student's report of being sexually harassed or assaulted by another student can constitute a violation of the recipient's responsibilities under Title IX. See generally *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

34. OCR is responsible for enforcing Title IX and the Department of Education's implementing regulations which prohibit sex discrimination in education programs and activities operated by educational institutions that receive Federal financial assistance. See 34 C.F.R. Part 106.

35. OCR has instructed funding recipients, through a series of policies issued over the course of many years, regarding their obligations under Title IX when responding to students' reports of sexual harassment and sexual violence by other students at school. These policies include but are not limited to:

- o United States Department of Education Office for Civil Rights, "Revised Sexual Harassment Guidance: Harassment of Students by school employees, other students, or third parties," (January 2001) ("2001 Sexual Harassment Guidance");
- o United States Department of Education Office for Civil Rights, January 2006 "Dear Colleague" letter concerning sexual harassm

Dear Colleague Letter at n.3 & n.10 (citing case law from the Fourth, Sixth, and Seventh Circuits as well as district courts); 2001 Guidance.

38. Schools are required to make sure their employees are trained to know how to report harassment to appropriate officials and respond nt t nt t nork-11dance.

for overseeing all complaints relating to sexual harassment. 2011 Dear Colleague Letter.
Schools are required to tell complainants that they have the right to file Title IX complaints.

44. Schools are not permitted to delegate their Titl

to subject the reporting victim to disciplinary exclusion from school, based in part on impermissible gender stereotypes. The District revealed its reliance on such stereotypes when it acted based upon the police's conclusion, after a day-long police inquiry, that the incident was "consensual" in part because Complainant failed to cry at the police interview. Sex stereotypes and archaic beliefs that victims of sexual violence should cry are an invalid basis for excluding reporting victims from school and subjecting them to punishment. Furthermore, disbelieving a report of sexual assault based on the victim's willingness to voluntarily enter an area with her attacker reinforces gender stereotypes that female victims invite or are responsible for the violence they experience.

50. As far as Complainant is aware, the District did not conduct its own inquiry at all, beyond the preliminary conversations with [REDACTED] and [REDACTED] when Complainant reported the sexual assault for the second time to a school official, much less a thorough and impartial investigation.
51. The District failed to comply with Title IX's requirement to minimize the burden imposed on students reporting sexual assault. The District violated this requirement egregiously by removing Complainant from her school and related educational activities. Moreover, while some schools have been held accountable for violating Title IX when they responded to reports of sexual harassment by urging the victim to drop out of an educational program or activity in order to protect herself from further harassment, here the District cannot even claim it was attempting to protect Complainant when it removed her from school, because it placed her in the same school as her attacker. Cf. *S.S. v. Alexander*, 77 P.3d at 740 (school's repeated advice to victim to leave her job with the football team while the alleged rapist, a football player, would remain was relevant to deliberate indifference); *Murrell v. Sch. Dist. No. 1186*, 1186 F.3d 1238, 1248-49 (10th Cir. 1999) (claim of deliberate indifference stated where district's response to allegations of peer sexual harassment was to suspend victim). Moreover, the District assigned her to a classroom that guaranteed that she would have to cross paths with her attacker on a daily basis.
52. The District did not protect Complainant from retaliation. On the contrary, the District itself engaged in retaliatory behavior by disciplining Complainant after she reported the assault. In addition, the District failed to take steps to protect Complainant from "name-calling and taunting" by "friends of the alleged perpetrator." The District subjected Complainant to precisely such retaliation by placing her in a disciplinary program with the alleged perpetrator and failing to take steps to protect her.
53. In this case, therefore, OCR's instruction to "see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined" is not necessary, as the District overtly and expressly disciplined Complainant as a direct result of her reporting having been sexually assaulted.
54. As far as Complainant and her family are aware, the District never involved a Title IX coordinator in investigating, overseeing, or addressing Complainant's report of sexual assault, nor did the District tell Complainant's family that they could talk to the Title IX

coordinator or even identify any such Title IX coordinator. The District did not comply with its obligation to notify Complainant and her family of their right to file a Title IX complaint.

55. It is unclear whether the District further violated Title IX's prohibition on delegating responsibility for investigating to a school resource officer. After reporting the assault, Complainant had contact only with police officers, including with one who may have also worked for the school or District. The [REDACTED] OCR should investigate whether, in addition to relying inappropriately on police action, the District delegated any remaining investigation to school security or resource personnel in violation of Title IX.
56. The District did not take steps to remedy the effects of its exclusion of Complainant from school in response to her report of sexual assault. Complainant was required to switch schools to DAEP in the middle of her senior year, drop out of band, and forfeit numerous extracurricular and academic activities. Eventually, in response to a lengthy letter from her attorneys, the District removed Complainant from the punitive disciplinary program and permitted her to enroll in yet a third school.

REMEDIES SOUGHT

57. The [REDACTED] OCR should fully investigate the District's response to Complainant's report that she was sexually assaulted by another student at school. The [REDACTED] OCR should issue a determination describing the District's Title IX violations.
58. The [REDACTED] OCR should require the District's employees, including teachers and band directors as well as principals, to undergo training on basic "Dos" and "Don'ts" of Title IX. At a minimum, these should include: "Never require a student reporting being assaulted to confront her attacker," "When a student reports being sexually assaulted, you may not exclude her from school in response," and "Do not put a student who reports being sexually assaulted into a disciplinary school with her alleged attacker." In addition, employees should be trained to ensure that reporting victims are immediately given the contact information for a properly designated Title IX coordinator. OCR has indicated that that such training "for the larger school community" can be appropriate to remedy harassment especially where, as here, the District's employees have said that other incidents have occurred regularly. 2001 Guidance.
59. The [REDACTED] OCR should require the District to remedy the effects of its actions, particularly on Complainant's academic and extra-curricular record. The District should be required to take affirmative steps to ensure that Complainant's placement in DAEP will not hurt her future scholastic or employment opportunities. Remedies could include a letter from the school indicating that Complainant's lack of participation in band during the relevant time period was due to factors beyond her control and caused by the school.
60. The [REDACTED] OCR should require the District to implement and enforce strong policies and procedures governing student safety at school and schools' response to sexual assault. These policies and procedures should require schools to conduct an active and thorough

investigation into all sexual assault claims and to implement grievance procedures that facilitate the prompt and equitable resolution of sex discrimination complaints.

61. The District should be required to adopt and enforce policies to protect sexual assault victims after they report sexual assault, including implementation of a policy providing that any student reporting sexual assault or harassment will not be placed in an alternative education facility without a thorough and effective investigation, and certainly not at the same time as her alleged attacker.

62. The District's attempts to follow its own grievance and Title IX procedures have failed. Accordingly, Complainants respectfully request that, in addition to the remedies requested above, the [REDACTED] OCR (1) undertake a systematic Compliance Review of the District's compliance with Title IX, particularly in light of the District's admission that situations similar to Complainant's occur on a yearly basis, (2) appoint an independent monitor to review the District's procedures and adherence to its own procedures, and (3) require the District to undergo monitoring and reporting for a period of five years.