

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

[REDACTED]
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]@ed.gov

ADMINISTRATIVE COMPLAINT

COMPLAINANTS

[REDACTED] (referred to below as “Complainant”)
[REDACTED]

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

Please direct all correspondence with Complainants to their attorneys, Sandra Park and Ariela Migdal, at the ACLU Women’s Rights Project.

Attorneys for Complainants:

Sandra S. Park and Ariela M. Migdal
Lenora M. Lapidus
ACLU Women’s Rights Project
125 Broad St. 18th Fl.
New York, NY 10004
(212) 519-7871 or -7861
f (212) 549-2580
spark@aclu.org
amigdal@aclu.org

Lisa Graybill and Mark Whitburn
ACLU Foundation of Texas
P.O. Box 8306
Houston, TX 77288-8306
(713) 942-8146
f (713) 942-8966
lgraybill@aclutx.org
mwhitburn@aclutx.org

RECIPIENT

[REDACTED] SCHOOL DISTRICT
[REDACTED]

PRELIMINARY STATEMENT

1. This Complaint is filed pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (“Title IX”), and the regulations and policies promulgated pursuant to that Title. *See* 34 C.F.R. § 106 et seq. and policies described below. Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities.
2. As detailed in the Factual and Legal Allegations below, Recipient, the [REDACTED] SCHOOL DISTRICT (the “District”), violated Title IX by excluding Complainant from school and from related educational programs and activities in response to her report that she was sexually assaulted at school by a fellow student. The District initially responded to Complainant’s report of being sexually assaulted by instructing her to confront the student who had attacked her. Subsequently, the District failed to conduct a prompt, thorough, and independent investigation as required by Title IX and by the policies of the United States Department of Education’s Office for Civil Rights (“OCR”), the primary agency responsible for enforcing Title IX and investigating violations. The District also failed to involve a Title IX coordinator. Instead, it concluded, based in part on impermissible gender stereotypes, that the reported assault had been “consensual” and subjected Complainant to prolonged disciplinary action, including requiring her to attend a disciplinary school with her alleged attacker. In these ways and others detailed below, the District directly excluded Complainant from education programs and activities on the basis of sex in violation of Title IX.
3. In order to address these violations, we request that the [REDACTED] Office for Civil Rights (“[REDACTED] OCR”) determine whether the District violated its obligations under Title IX by investigating the District’s response to Complainant’s report of sexual assault, excluding Complainant from school for a prolonged period, its failure to investigate, and subjecting Complainant to prolonged discipline and to retaliation. In addition, we request that the [REDACTED] OCR undertake a Compliance Review of the District to determine whether its practices, procedures, and training of staff regarding response to student reports of sexual, dating, and gender-based violence and harassment comply with Title IX and remedy any unlawful conduct, practices, and procedures. We ask the [REDACTED] OCR to require the District and its employees to undergo ongoing training, review, and monitoring and to redress the effects of its discrimination against Complainant.

JURISDICTION

4. The [REDACTED] OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.
5. Complainants have not filed this administrative complaint with any other agency or institution.
6. This complaint is timely, because it is being filed within 180 days of the discriminatory conduct. In response to Complainant’s report of being sexually assaulted, the District placed

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 point, the police and Complainant's parents were contacted by ██████████ who summoned them to the high school. Complainant was brought by police to ██████████ Child Advocacy Center, where she was interviewed and examined for sexual assault. She was told by the nurse examiner that she had sustained lacerations consistent with sexual assault. Complainant's parents talked with a police detective (not believed to be a District employee) and were told the matter would be investigated.
12. Complainant was not then, or at any other time, interviewed by a Title IX coordinator, school counselor, principal, or any other person she knew to be an employee of the school, other than her conversations with ██████████. No hearing was ever held by the school. To the best of Complainants' knowledge, the only investigation that was conducted at that time was the one conducted by the police on December 8.
13. The following day, December 9, Complainant's parents were summoned to the town Police Department. There, a Detective ██████████ informed them that the incident had been deemed "consensual" by the Police Department, in part because Complainant did not cry during her

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 [REDACTED], who has an office at the school, told them that Complainant would be removed from [REDACTED] High School and placed in a Disciplinary Alternative Educational Program (DAEP). Detective [REDACTED] 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 [REDACTED] ("Principal") of [REDACTED] High School. Complainant's mother told the Principal that she wanted to transfer her daughter to [REDACTED] 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 [REDACTED] 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 [REDACTED] expressing her dismay at how the incident had been handled and that she had not received an appropriate conference on Complainant's placement in DAEP. Despite her request, the Principal and Superintendent did not send a written response to Complainant's mother.
20. At a January 4, 2011, meeting with Complainant's parents, the Principal stated that Complainant would be placed in DAEP for 45 days, and, indeed, that she would be placed in the same DAEP as her attacker. He did not give Complainant or her parents a written DAEP order. At the meeting, he retroactively claimed that the December 13 meeting had been a conference on Complainant's placement in DAEP, even though he had not invited Complainant to attend and, at that meeting, did not explain to Complainant's mother the basis for Complainant's placement in DAEP or give Complainant an opportunity to be heard or object.
21. At the January 4 meeting, the Principal stated that he could not guarantee Complainant's safety when she went to the same DAEP as her attacker. Later, the principal of the DAEP admitted the same thing.

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 assignments differently.
26. In addition, Complainant believes that her attacker told other students at DAEP about "the sexual encounter." Complainant was harassed and teased by other students for having sex with the attacker and for reporting the sexual assault. Her attacker's cousin also posted harassing messages to her on Facebook.
27. Complainant's educational opportunities were substantially diminished in DAEP, even beyond her exclusion from her school in the middle of her senior year and the fact that DAEP is a disciplinary program. The academic offerings at DAEP were at a much lower level than at ██████████ High School. Her class included sixth graders. One student brought a knife to school. Complainant felt very unsafe there. Furthermore, Complainant was unable to participate in the same extracurricular activities, such as band and Future Farmers of America, in which she had engaged at her school. As a result, she lost opportunities to win band scholarships, go on band trips, and earn money raising poultry through Future Farmers.
28. Complainant's placement in DAEP began on January 5 and continued until March 1, 2011, at which time she was allowed to transfer to ██████████ High School following advocacy by her attorneys. Her attorneys had sent a letter to the District dated February 24, 2011.
29. Prior to her placement in DAEP, to the best of Complainant's knowledge, the school never conducted an investigation into the sexual assault independent of the investigation of the Police Department. Nor is she aware of any investigation conducted afterwards, except for an inquiry conducted by the school's attorney in response to advocacy by her attorneys.
30. The school never informed Complainant of the existence of a Title IX coordinator or other school official responsible for handling sexual assault complaints.
31. The school never informed Complainant about Title IX, that it prohibits retaliation for reporting sexual assault, or that she had the right to file a Title IX complaint.

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:

- 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");
- United States Department of Education Office for Civil Rights, January 2006 "Dear Colleague" letter concerning sexual harassment ("2006 Dear Colleague Letter");
- United States Department of Education Office for Civil Rights, "Sexual Harassment: It's Not Academic" (Sept. 2008); and
- United States Department of Education Office for Civil Rights, April 4, 2011 "Dear Colleague" letter discussing schools' obligations to respond appropriately to incidents of sexual violence ("2011 Dear Colleague Letter").

36. Together, these OCR publications set forth the standards with which funding recipients must comply when responding to reports of sexual violence at school in order to comply with Title IX, including instructions about what funding recipients may do and what they may not do. The relevant principles are outlined below.

37. When a school learns of peer harassment that creates a hostile environment, the school must take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. It is widely recognized that the rape or sexual assault of a student constitutes conduct sufficiently severe and pervasive to deprive a student of equal access to education. 2011

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 properly. 2001 Guidance; 2011 Dear Colleague Letter.
39. OCR has made clear that victims must not be required to “work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school.” 2011 Dear Colleague Letter. “Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.” 2011 Dear Colleague Letter; *see also, e.g., S.S. v. Alexander*, 177 P.3d 724, 730, 740 (Wash. App. Div. 1 2008) (finding a jury question on the question of Title IX liability where the school’s only remedial action was to have the rape victim engage in mediation with her attacker).
40. When a student or student’s parent requests action relating to a sexual assault, the school is obligated to investigate promptly. This 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.” 2011 Dear Colleague Letter (emphasis added); 2001 Guidance. This is because the standard for prosecuting an alleged assailant in the criminal justice system differs from the standard governing schools’ responsibility to investigate and protect students’ access to education under Title IX. A school may not wait until a police investigation is over to initiate its own investigation. The school’s inquiry must be prompt, thorough and impartial. The “reasonable doubt” standard used in the criminal context is not the Title IX standard.
41. Title IX requires that schools protect complaining students’ access to educational opportunities by minimizing burdens on complainants when separating them from their harassers. 2001 Guidance. Schools and funding recipients “should not, as a matter of course, remove complainants from classes or housing.” 2011 Dear Colleague Letter; *see also S.S. v. Alexander, supra*, at 740 (school repeatedly suggested that student victim raped by student football player leave her job with the football team). Schools may not respond to sexual violence by further depriving reporting victims of access to education, and they must take steps to eliminate any hostile environment.
42. Title IX prohibits retaliation against students for reporting sexual harassment. Schools must “take steps . . . to prevent any retaliation against the student who made the complaint.” 2001 Guidance. Schools must “review any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.” 2011 Dear Colleague Letter. The school is required to inform the complainant that Title IX prohibits retaliation. Naturally, the funding recipient may not *itself* engage in retaliation against the reporting student.
43. Title IX requires funding recipients to publish *and utilize* procedures for handling reports of sexual harassment and assault. Grievance procedures must not only be written, but “fairly applied.” 2001 Guidance. Schools must designate a Title IX coordinator, who is responsible

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 Title IX investigatory responsibilities to school resource officers, contract law enforcement officers, or others. 34 C.F.R. §§ 106.4, 106.8.
45. Schools also must take steps to remedy the effects of sexual harassment and any resulting exclusion from educational opportunities.

B. Application of Legal Framework to Complainant's Allegations

46. Much of the legal authority addressing student-on-student sexual harassment concerns two questions: (1) whether the harassment was severe and pervasive enough to deprive a student of equal access to education, and (2) whether the funding recipient's deliberate indifference to the harassment effectively excluded the victim from an education program by, for example, causing her to drop out of school. In this case, such an analysis is unnecessary, because the District itself directly, intentionally, and formally excluded Complainant from school and from her extra-curricular activities by forbidding her from attending her school, as a direct response to her report of having been sexually assaulted by another student at school. In Title IX's terms, the District directly "excluded" Complainant "from participation in" and "denied [her] the benefits of" "an education program" (and activities), in addition to "subject[ing her] to discrimination." *Cf. Simpson v. Univ. of Colorado Boulder*, 500 F.3d 1170, 1178, 1184-85 (10th Cir. 2007) (finding a jury question on school's "official policy" of deliberate indifference where school maintained a recruiting program that it knew had resulted and was likely to result in sexual assaults).
47. The District violated its Title IX obligations in other ways as well. Rather than taking immediate effective action to eliminate the hostile environment and prevent its recurrence as required by OCR's 2001 Guidance, the District exiled Complainant from her school and required her to attend a different – and inferior and punitive – school *with her attacker*. When pressed, the District refused to guarantee her safety, and Complainant was subjected to additional, related harassment, including retaliatory harassment by other students.
48. The District failed to comply with its obligation to train its employees and to ensure that they were prepared to respond effectively and appropriately to reports of sexual harassment. *See* 2001 Guidance. The first staff member to whom Complainant reported the assault did not report it to any other school official and responded unlawfully, telling Complainant to confront her attacker and ask "why he was doing what he did." This response directly violates OCR's repeated mandate to schools that it is never appropriate to require a victim of sexual violence to "work it out" with the person who she alleges attacked her.
49. This case is a textbook illustration of the reasons underlying OCR's requirement that schools conduct their own "prompt, thorough, and impartial" investigation in response to reports of sexual violence, rather than relying on any criminal investigation conducted by the police. The District violated this requirement egregiously by failing to conduct its own investigation, instead relying on the police investigation. The District made decisions, including a decision

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*, 177 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. 1*, 186 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.