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March 28, 2022

VIA EMAIL

██████████ Claimant
Linda Galuppo, Advisor to Claimant

RE: Outcome of Title IX/Sexual Harassment Investigation

Dear Ms. ██████████

On February 15, 2022, ██████████ (Complainant), an employee of Carmel Unified School District (CUSD) filed a Uniform Complaint Procedure (UCP) complaint against Roel Martinez (Respondent), a fellow employee, alleging that Respondent engaged in sexual harassment in violation of CUSD's policies.

The investigation was completed following the procedures outlined in the Uniform Complaint Procedures (UCP) found in Board Policy (BP) 1312.3, Administrative Regulation 1312.3 and BP/AR 4119.11. This report fairly summarizes the relevant evidence and investigative findings.

Megan Farrell and Eryn Reyes Leong, Title IX Consultants conducted the investigation on behalf of CUSD. The Title IX Investigative Report, fairly summarizing relevant evidence from the investigation of the formal complaint, was completed on March 21, 2022.

As decision-maker in this matter, this written outcome sets forth my determination regarding responsibility as to the complaint alleging Title IX Sexual Harassment, California state law sexual harassment and nondiscrimination, and specifically whether there has been a violation of Board Policies and Administrative Regulation 4119.11.

I. Summary of the Allegations Potentially Constituting Sexual Harassment Under BP/AR 4119.11

The UCP alleged the following:

1. On or about 7/8/20, Respondent asked Complainant if she had a rape whistle.
2. On or about 7/9/20, Respondent came into the room where Complainant was working and said, "You don't mind if I sit here and watch you?" and Respondent stayed until the end of Complainant's shift.

3. On or about 7/10/20, Respondent called Complainant "easy" after she asked a question regarding the carpet cleaner.
4. On or about 7/14/20, Respondent referred to a female as "a Catholic whore and she liked little boy's dick" and proceeded to make graphic statements about "Catholic whores."
5. On or about 7/15/20, Respondent made comments about a teacher's wife, saying she was "really pretty" but must have "gotten fat." In this same conversation, Respondent stated that the teacher must have a "big schlong." Again, in this same conversation, Respondent then called another teacher "a bitch" and said that "bitch better not be fat."
6. On or about 7/16/20, Respondent called another employee a "bitch."
7. On or about 7/16/20, Respondent made comments about the "bush" as Complainant trimmed dead flowers and plants and told Complainant to leave the "bush" alone so it could grow.
8. On or about 7/17/20, Respondent told the custodial employees that they needed to "shit some energy."
9. On or about 7/17/20, Respondent asked Complainant if she wanted to "sit on his ball" as he was sitting on a red ball in a classroom.
10. On or about 7/21/20, Respondent said that "[Complainant] don't do shit."
11. On or about 7/21/20, Respondent told Complainant he needed her to "hurry the hell up."
12. Another employee filmed Complainant without her permission in the presence of Respondent.
13. On or about 9/21/21, after returning from leave, Complainant discovered that her personal items and tools had been thrown away.
14. When Complainant asked Respondent to help her lift a trash can full of water, he asked her when "she would retire" because he needed someone who could lift.
15. In 2020, Respondent referred to the daughter of a teacher as a "whore."

II. Jurisdiction

A. Title IX Sexual Harassment

As set forth in the Notice of Allegations, this matter was dismissed under Title IX and CUSD 4119.12.

B. California State Law Sexual Harassment and Nondiscrimination

Although the allegations (even assuming they are all true) did not meet the federal definition of sexual harassment set forth in AR 4119.12, the allegations if true could meet CUSD's definition of sexual harassment as defined in AR 4119.12.

As stated in the referenced policy:

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district.

A. Procedural Steps

The investigation contained the following components:

- February 15, 2022 – Complainant filed formal UCP Complaint, Exhibit A.
- February 28, 2022 – Notice of Allegations sent to Complainant and Respondent, Exhibit B.
- March 1, 2022 – Interview of Complainant and Custodian Witnesses
- March 2, 2022 – Interview of Respondent
- March 8, 2022 – Interview of Gruber and Paul
- March 4, 2022 – Contemporaneous Notes of Claimant submitted through Advisor, Exhibit C.
- March 10, 2022 – Interview of Witness, C. Tuana
- March 9, 2022 – Receipt of email from C. Chavez regarding reporting of incident, Exhibit D.
- March 21, 2022 – Receipt of email from C. Chavez regarding employee status, Exhibit E.
- March 24, 2022 – Investigation completed, report finalized and sent to decision-maker
- March 28, 2022 – Outcome letter delivered to parties

III. Findings of Fact Supporting the Determination

Using a preponderance of the evidence standard, the Investigator concluded the following:

1. On or about 7/8/20, Respondent asked Complainant if she had a rape whistle.

We find that it is more likely than not that Respondent made this comment to Complaint, as reported by Complainant and supported by a witness, Thompson, who sent a contemporaneous email to superiors in the custodial department that mentioned this incident. We find it more likely than not that Respondent made this comment to Complainant while she was only female in the room and that the comment had sexual overtures and was designed to make Complainant feel uncomfortable.

2. On or about 7/9/20, Respondent came into the room where Complainant was working and said, "You don't mind if I sit here and watch you?" and Respondent stayed until the end of Complainant's shift.

We find that it is more likely than not that Respondent made this comment as reported by Complainant and admitted by Respondent. We find it more likely than not that this comment was not sexual in nature. Thus, this matter is being referred to Human Resources for further handling.

3. On or about 7/10/20, Respondent called complainant "easy" after she asked a question regarding the carpet cleaner.

We find that it is more likely than not that Respondent made this comment as reported by Complainant and admitted by Respondent. We find it more likely than not that this comment was not sexual in nature

but was in reference to comparing Complainant to another employee, Melgoza, who is known as "EZ." Thus, this matter is being referred to Human Resources for further handling.

4. On or about 7/14/20, Respondent referred to a female as "a Catholic whore and she liked little boy's dick" and proceeded to make graphic statements about "Catholic whores."

We find that it is more likely than not that Respondent made these statements. Complainant provided contemporaneous notes that reference a discussion of Mary Jo Letourneau. See Exhibit C. Despite Respondent's denial of this statement, Respondent use of crude language was confirmed by him in relation to Allegation 8. Because of the unique nature of this conversation and the contemporaneous notes reflecting this conversation, we find it more likely than not that the discussion as reported by Complainant took place.

5. On or about 7/15/20, Respondent made comments about a teacher's wife saying she was "really pretty" but must have "gotten fat." In this same conversation, Respondent stated that the teacher must have a "big schlong." Again, in this same conversation, Respondent then called another teacher "a bitch" and said that "bitch better not be fat."

We find that there is sufficient evidence to support Complainant's allegation that Respondent made these statements. Although Respondent denied this statement, Complainant kept contemporaneous notes that provide some detail related to this statement, including the name of the male high school teacher, Silva. It was confirmed by Human Resources via email on 3/21/2, that Silva is in fact married to a middle school teacher, a fact that Complainant would not have known because she does not work at the middle school, lending credence to her account. Exhibit F, Email from Chavez regarding teachers.

6. On or about 7/16/20, Respondent called another employee a "bitch."

We find that there is sufficient evidence to support Complainant's allegation that Respondent referred to at least one and maybe two female employees as "bitch". Although Respondent denied this, this use of language is consistent both with language Respondent admitted to using (Allegation 8) as well as the other language found to have been used during this investigation.

7. On or about 7/16/20, Respondent made comments about the "bush" as Complainant trimmed dead flowers and plants and told Complainant to leave the "bush" alone so it could grow.

We find that it is more likely than not that Respondent made this comment, as reported by Complainant and somewhat admitted by Respondent. Although Respondent's memory of this incident was not consistent with Complainant's recollection, we find that it is more likely than not that Complainant's account of this discussion was accurate, and such information was also reflected in her contemporaneous notes. We find it more likely than not that this comment was sexual in nature and designed to make Complainant feel uncomfortable.

8. On or about 7/17/20, Respondent told the employees that they needed to "shit some energy."

We find that it is more likely than not that Respondent made this comment as reported by Complainant and admitted by Respondent. We find it more likely than not that this comment was not sexual in nature. Thus, this matter is being referred to Human Resources for further handling.

9. On or about 7/17/20, Respondent asked Complainant if she wanted to "sit on his ball" as he was sitting on a red ball in a classroom.

We find that it is more likely than not that Respondent made this comment as reported by Complainant. Respondent confirmed that they had a conversation about Complainant potentially being interested in having an exercise ball, but his explanation was not in line with other interactions between the parties. In this instance, no corroborating witness was located. However, considering Complainant's contemporaneous written records, as well as behavior admitted to by Respondent, we found a preponderance of the evidence that Complainant's recollection of this event was an accurate reflection of this conversation. We find it more likely than not that this comment was sexual in nature.

10. On or about 7/21/20, Respondent said that "[Complainant] don't do shit."

We find that it is more likely than not that Respondent made this comment as reported by Complainant, which was heard by a witness and admitted to by Respondent. We find it more likely than not that this comment was not sexual in nature. Thus, this matter is being referred to Human Resources for further handling.

11. On or about 7/21/20, Respondent told Complainant he needed her to "hurry the hell up."

We find that it is more likely than not that Respondent made this comment as reported by Complainant, although denied by Respondent. We find it more likely than not that this comment was not sexual in nature. Thus, this matter is being referred to Human Resources for further handling.

12. Another employee filmed Complainant without her permission in the presence of Respondent.

We find that it is more likely than not that Garcia filmed Complainant without her permission. Respondent was not involved in this allegation. This matter is being referred to Human Resources for immediate action.

13. On or about 9/21/21, after returning from leave, Complainant discovered that her personal items and tools had been thrown away.

We find that it is more likely than not that Avalos took Complainant's items and threw them away, as reported by Complainant and confirmed by Respondent. Respondent was not involved in the taking of these items; however, he took no action after learning about this incident. We find it more likely than these actions were not sexual in nature. Thus, this matter is being referred to Human Resources for further handling.

14. When Complainant asked Respondent to help her lift a trash can full of water, he asked her when "she would retire" because he needed someone who could lift.

We find that it is more likely than not that Respondent made this comment as reported by Complainant and admitted by Respondent. We find it more likely than not that this comment was not sexual in nature. Thus, this matter is being referred to Human Resources for further handling.

15. In 2020, Respondent referred to the daughter of a teacher as a "whore."

We find that it is more likely than not that Respondent made this comment, as reported by Complainant and Paul, despite Respondent's denial. The facts indicate that Complainant reported this incident up the chain of command close in time to when it was reported. We find it more likely than not that this comment was sexual in nature.

B. Conclusions and Analysis

Based on the totality of the circumstances, the information obtained in the investigation and using the preponderance of evidence standard of evidence, I conclude that:

Allegations of Sexual Harassment under California state law (BP and AR 4119.11)

I find that there is sufficient evidence to support a finding of sexual harassment under BP/AR 4119.11. Specifically, I find that the conduct of Respondent amounted to “unwanted verbal, visual, or physical conduct of a sexual nature regardless of whether or not the conduct is motivated by sexual desire”.

Allegations 1,7 and 9 detail comments made that were sexual in nature and as such meet the criteria for unwanted verbal conduct of a sexual nature.

Further, I find that the conduct did have the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.

Allegations 1, 7, 9 and 15 all detail comments made that would create a hostile work environment where comments of a sexual nature were used. Additionally, allegations 4, 5 and 6 were of an offensive nature in as much as they were sexually explicit or suggestive of sexual activity discussed in the work place. Allegation 6 also details inappropriate language directed toward female employees and as such, is conduct that is offensive to others.

In addition, it is my determination that the district as a whole could have addressed this matter in a more appropriate manner, including clear delineation of the investigation and follow through on reported incidents.

Given the findings it is my recommendation that the following be addressed:

- 1) The Respondent is referred to CUSD Human Resources for discipline consistent with CUSD policy and the CUSD/CSEA contract for sexual harassment detailed in allegations 1,7,9, and 15
- 2) The Respondent is referred to CUSD Human Resources for disciplinary action consistent with CUSD policy and the CUSD/CSEA contract for allegations 8,10,11 and 14 for inappropriate comments about another employee.
- 3) Allegation 12 be referred to the CHS Administrative designee for disciplinary action of the employee identified as filming the complainant.
- 4) The results of this investigation are to be referred to the Superintendent's office for evaluation of the systemic lack of response to the allegations and a process for timely follow through be developed.

A. Corrective Actions

Complainant's work shift was changed from 7:30AM-3:30PM each day to 6:30AM-2:30PM to prevent the parties from working together during the pendency of the investigation.

It is recommended that this change continue until CUSD Human Resources and the Superintendent's office address the disciplinary actions recommended above.

C. Discipline and Appeal Procedures

Any discipline for Respondent related to these findings will be managed in accordance with the CSEA contract and BP/AR 4218. Additional information with regard to this process will be sent to the Respondent through the Human Resources department.

This matter is now concluded.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jonathan Lyons', written over a horizontal line.

Jonathan Lyons