



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

October 3, 2019

Dr. Lisha Cabral  
Superintendent  
Easton Public Schools  
50 Oliver Street  
North Easton, MA 02356

Via e-mail: [lcabral@easton.k12.ma.us](mailto:lcabral@easton.k12.ma.us)

Re: Case No. 01-15-1149  
Easton Public Schools

Dear Superintendent Cabral:

This letter is to advise you of the outcome of the investigation of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the Easton Public Schools (the District). The Complainant alleged that the District discriminated against a student (Student 1) on the basis of sex, by failing to respond promptly and equitably to notice that Student 1 had been sexually assaulted by another student (Student 2) on XXXX, and XXXX. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps outlined in the enclosed Resolution Agreement (Agreement).

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving federal financial assistance from the Department. Because the District receives financial assistance from the Department, OCR has jurisdiction to investigate this complaint pursuant to Title IX.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following legal issue for investigation:

- Whether the District failed to respond promptly and equitably to complaints, reports, and/or incidents of sexual harassment, including sexual violence, of which it had notice, concerning Student 1, and if so, whether Student 1 was subjected to a sexually hostile environment, in violation of 34 C.F.R. §§ 106.8(b), 106.31(a) and (b).

### **Background and Investigation to Date**

Easton Public Schools is located in North Easton, Massachusetts, and enrolls approximately 3,722 students in its pre-kindergarten to grade 12 school system. At the beginning of the 2013-

2014 school year, Students 1 and 2 were enrolled in the same XXXX classroom at the XXXX School (School).

*XXXX Incident*

OCR's investigation to date indicates that on XXXX, as the class was preparing for the morning announcements, Students 1 and 2 asked to go to two separate XXXX located at the XXXX. The XXXX Teacher (Teacher) informed OCR that after she noticed Students 1 and 2 had not returned by the end of the Principal's morning announcements, she asked the XXXX Aide (Aide) to check on them. The Aide went to the XXXX and found Students 1 and 2 in the XXXX XXXX together with the door closed and locked. Student 2 opened the door when the Aide knocked. According to the Aide, Student 1 told her that Student 2 asked to XXXX. The Teacher immediately contacted the Principal, who was responsible for investigating such issues.

The Principal informed OCR that, upon receiving the Teacher's report, he contacted the School Psychologist, called Student 1's parent, and requested permission to interview Student 1. According to the Principal, after the Complainant indicated she was comfortable with the Principal and School Psychologist talking to Student 1, they interviewed Students 1 and 2 separately. The School Psychologist stated that, based on both interviews, the following points could be considered valid from the interviews: Student 2 asked Student 1 to go to the XXXX ; Student 2 locked the door; and Student 1 did not want to go to the XXXX and felt scared. She noted that no other valid conclusions could be drawn because both Students 1 and 2 provided inconsistent answers, and a shift in Student 1's appearance and behavior during her interview indicated that she was answering in attempt to please the interviewers. These actions all took place on XXXX , and OCR reviewed contemporaneous investigative records demonstrating the same.

Several days later, on XXXX, the Complainant wrote to the Principal to request information about, among other things, what actions the District had taken to "ensure the safety of [Student 1] and other students."<sup>1</sup> The District and the Complainant confirmed that the Principal immediately responded by explaining that, in addition to the investigation on XXXX (detailed above), the School filed a 51A report with the Department of Children and Families; and developed a Safety Plan after meeting with both families, which incorporated the following provisions:

- 1) Student 2 was immediately placed in another XXXX classroom with the understanding that Students 1 and 2 would not be placed in the same classroom for the remainder of their time at the School;
- 2) Student 2 was assigned a seat on the school bus (front seat diagonally to the bus driver) with a bus monitor assigned to ensure Students 1 and 2 remained separated;
- 3) Door locks were removed from all XXXX XXXX doors;
- 4) Staff were informed that Student 2 was not to go to the XXXX unsupervised;
- 5) Staff were informed that Students 1 and 2 were to have no contact during lunch, recess or joined specials;

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<sup>1</sup> As explained below, in the XXXX email, the Complainant also expressed a concern about an incident that took place on XXXX. However, in his response, the Principal referenced the XXXX incident.

- 6) The Psychologist consulted with the Complainant and provided her a reference to an XXXX at the XXXX and
- 7) The Principal followed up with the Teacher daily to ensure that Student 1 had no further issues related to the incident.

On XXXX, the Complainant wrote to the Superintendent inquiring about the status of the District’s investigation of the XXXX incident.<sup>2</sup> The Superintendent responded on XXXX , stating that the District found that the XXXX incident violated the code of conduct but declined to characterize Student 2’s conduct as sexual harassment. In addition, the Superintendent noted that a safety plan was developed for Student 1. OCR learned that while there were multiple subsequent discussions among the Complainant, and District staff and administrators, the Superintendent’s XXXX letter was the primary notification to the Complainant of the outcome of the District’s investigation into the XXXX incident.

#### *XXXX Incident*

The Complainant informed OCR that on the evening of XXXX, Student 1 told her that another incident took place between Students 1 and 2 earlier that week on XXXX, XXXX .That same evening, the Complainant reported this information to the School Psychologist. The School Psychologist responded by assuring the Complainant that she would speak with the Principal the next day to come up with ideas for a response.

As noted above, on the evening of XXXX, the Complainant wrote an email to the Principal requesting a meeting to discuss the XXXX incident (not the XXXX incident), and explained that Student 1 informed her that as she was closing the door of the XXXX XXXX, Student 2 entered the XXXX and upset her by refusing to leave despite her request. The Complainant also expressed concerns about Student 1’s future interactions with Student 2 while at school and on the bus.

Although the Principal responded to the Complainant’s email (as noted above), it is unclear if he believed he was referring to the XXXX incident or the separate incident that occurred on XXXX . In particular, he referenced the School’s attempts to address the “incident” (singular) that he learned about on the morning of XXXX , which was when the Teacher contacted him about the incident that occurred on the same day.

Correspondence provided by the Complainant shows that as of XXXX, the Complainant had clearly articulated her concern to the District about two separate incidents and was actively attempting to ascertain what actions the District was taking in response to her concerns. The correspondence also indicates that the District held at least one meeting in response to the Complainant’s inquiries.

As noted above, on XXXX, the Superintendent informed the Complainant that the District investigated both the XXXX and XXXX incidents. With respect to the XXXX incident, the

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<sup>2</sup> As detailed below, in this same email, the Complainant also inquired about the status of the District’s investigation of the XXXX incident. In response, the Superintendent said that he investigated both incidents and the XXXX incident was not substantiated.

Superintendent stated that it “*was investigated...It is my understanding that once [the Principal] was made aware of the fact that something may have happened between the students on the XXXX, that this was fully investigated as well. It is also my understanding that the incident on the XXXX could not be substantiated.*”

The only other evidence of the District’s response to the XXXX incident was a statement in the District’s data response to OCR, in which the District indicated that “[t]he Complainant informed the District that there was another incident on XXXX but the District was made aware of this alleged incident after the incident on the XXXX and the District was unable to substantiate that anything occurred on that date.”

Interviews with District staff provided conflicting information as to whether the District responded to the XXXX incident. Furthermore, unlike the District’s detailed records of its investigation of the XXXX incident, the District provided no investigative materials regarding the District’s response to the XXXX incident. Also, when the School Committee hired an outside consultant to conduct a review of the District’s investigation of the Complainant’s concerns, the two-page consultant report did not address the XXXX incident.

#### *Subsequent Interaction between Students 1 and 2*

The Safety Plan developed by the District remains in effect. The 2018-2019 Safety Plan noted three additional interactions between Students 1 and 2 during the 2015-2016 and 2016-2017 school years when Student 2 approached Student 1 during the school day or at school events. The Safety Plan also indicates that “[t]here was no reported interaction between the two students during the 2017-2018 XXXX year.”

#### **Legal Standard**

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. The Title IX regulation, at 34 C.F.R. § 106.31(a), states that no person 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 operated by a recipient of federal financial assistance. Sexual harassment that creates a hostile environment can be a form of sex discrimination prohibited by Title IX.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. In response to a complaint of sexual harassment, a recipient must take prompt and equitable responsive action. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint is prompt and equitable.

#### **OCR’s Investigation to Date**

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR's preliminary investigation indicates that the District's response to the XXXX incident appears to have aligned with the prompt and equitable requirements of Title IX. Specifically, witness interviews and investigative records indicate that the District immediately initiated an investigation of the reported incident that appeared designed to ascertain what occurred. The District also promptly developed a Safety Plan, which included, among other terms, reassigning the students into different XXXX classrooms; informing staff that Student 2 could not go to the XXXX unsupervised, and that Students 1 and 2 could have no contact during lunch, recess or joined specials; and removing the locks on all XXXX XXXX doors. OCR also notes that, after finding that misconduct occurred, District administrators generally responded promptly to the Complainant's ongoing concerns about Student 1's safety throughout the remainder of the school year. In addition, the District continues to implement, evaluate, and revise Student 1's Safety Plan.

However, OCR has a concern that the District may not have promptly and equitably responded to notice of the XXXX incident. OCR has not obtained the data necessary to determine whether the District responded appropriately to the allegation of misconduct on XXXX the evidence is preliminary and conflicting on this issue, including whether and how the District considered this incident when formulating its apparent response to the XXXX incident. Although the District's XXXX outcome letter and data response stated that the District fully investigated the XXXX incident (but was unable to conclude that misconduct occurred), this information was not clearly corroborated by the statements of District staff during their interviews, and OCR notes that the subsequent audit conducted by the District only discusses the XXXX incident but not the XXXX incident. Further, the District provided no investigative materials to OCR regarding its response to the XXXX incident. The absence of investigative materials was notable given the District's records of its thorough response to the XXXX incident. While there is no obligation under Title IX to maintain specific records, OCR is concerned the District may not be aware and/or able to confirm if it responded to the XXXX incident. This lack of recordkeeping contributed to OCR's concern as to whether the District appropriately responded to the XXXX incident.

Because the District requested a voluntary resolution and OCR deemed such a resolution appropriate, OCR has not fully evaluated the equity of the District's investigation and resolution of the XXXX incident of alleged sexual harassment. The Agreement will ensure that the District meets with the Complainant to discuss the District's handling of the XXXX and XXXX incidents, and determines whether additional action is appropriate. Relatedly, the Resolution Agreement includes provisions addressing the District's recordkeeping and training to ensure the prompt and equitable resolution of complaints under Title IX.

### **Conclusion**

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address the allegations raised in the complaint and the concerns identified during OCR's investigation. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s Abra Francois

Abra Francois  
Compliance Team Leader

Enclosure

cc: Colby Brunt, Esq. (by email: [Cbrunt@SCMLLP.COM](mailto:Cbrunt@SCMLLP.COM) )