



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 16, 2020

Mr. Ronald Stadler
Jackson Lewis P.C.
330 E. Kilbourn Ave, Suite 560
Milwaukee, WI 53202

Sent via email only to: Ronald.Stadler@jacksonlewis.com

OCR Case No. 05-18-1276

Dear Mr. Stadler:

This is to advise you of the resolution by the U.S. Department of Education (Department), Office for Civil Rights (OCR), of the above-referenced complaint filed with OCR on XXXXXXXXXXXXXXXX, against the School District of Delavan-Darien (District). The complaint alleges that the District discriminated against Student A based on sex (female) when it failed to respond promptly and equitably to reports of sexual misconduct by a male student (Student B) in XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688, and Title IX’s implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance from the Department. As a recipient of Federal financial assistance, the District is subject to the requirements of Title IX and its implementing regulation. OCR therefore has jurisdiction over this complaint.

During its investigation to date, OCR interviewed the Complainant, Student A, and Student A’s father, as well as current and former District staff members. Prior to the completion of OCR’s investigation, the District expressed an interest in resolving the complaint under Section 302 of OCR’s *Case Processing Manual*. OCR determined it was appropriate to resolve the complaint with an agreement.

Applicable Legal Standard

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: “Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. In cases of such harassment, a school has an obligation to respond promptly and equitably.

In determining whether sexual harassment exists, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of sex-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

Under Title IX, a school has a responsibility to respond promptly and effectively to notice of sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

OCR enforces the requirements of Title IX consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment. Thus, for example, in addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish sex discrimination under the statutes enforced by OCR.

Facts

Student A reported that Student B had sexually harassed her in the afternoon on
XX
XXXXXX. Student A reported that Student B touched her repeatedly in a sexual manner,
XX
XX.¹ Student A reported

¹ XXXXXXXXXXXXXXXXXXXXXXX, Student A informed a teacher, guidance counselor, and her high school's Associate Principal that Student B had sexually harassed her on multiple occasions. She reported that Student B first sexually harassed her XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX near the high school and subsequently sent XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. She did not report the misconduct to anyone in XXXXXXXXXXXXXXX.

Page 5 – Mr. Stadler

Team Leader

Enclosure