



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS  
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CHICAGO, IL 60604

REGION V  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

February 25, 2022

Dr. Dan Roach  
Superintendent  
Washington Community Schools  
Sent via email only to [droach@wcs.k12.in.us](mailto:droach@wcs.k12.in.us)

RE: OCR Docket #05-19-1222

Dear Dr. Roach:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities in connection with the above-referenced complaint filed against Washington Community Schools (Corporation).

The complaint alleged the following: (1) in XXXXX, the Corporation subjected an elementary school student (Student A) to discrimination based on sex (female) when another student (Student B) sexually harassed her and the Corporation was aware of the sexual harassment but failed to take appropriate action in response; and (2) XXXXX, the Corporation subjected Student A to discrimination based on race (black) in responding to her report of sexual harassment.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d – 2000d-7, and its implementing regulation at 34 C.F.R. Part 100, which prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance, and 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,<sup>1</sup> which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance from the Department of Education. As a recipient of Federal financial assistance, the Corporation is subject to the requirements of these laws.

During its investigation, OCR reviewed documents from the Corporation and Student A’s parent (Parent A) and interviewed Parent A, Student A’s mother (Parent B), and Corporation personnel. Based on the investigation, OCR determined there was insufficient evidence to establish a violation with regard to Allegation #2. Prior to OCR making a finding regarding Allegation #1,

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<sup>1</sup> Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, OCR analyzed this complaint based on the prior Title IX regulation that was in effect at the time when the alleged acts occurred. You can find that regulation [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR’s website at [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>

the Corporation signed the enclosed Resolution Agreement (Agreement) to resolve compliance concerns identified by OCR. The bases for OCR's conclusions are set forth below.

### **Legal Standards**

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 Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit, 34 C.F.R. § 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

While the Title IX regulation in effect in the 2018-2019 school year did not reference sexual harassment, OCR interpreted Title IX at that time to require school districts to respond to complaints or other notice of sexual harassment involving students and employees. 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. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including whether the conduct was unwelcome to the student(s), 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 gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

Under the Title IX regulation in effect for the time period reviewed in this investigation, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and 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 locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

If a school's investigation or other appropriate steps to determine what occurred identify staff-on-student sexual harassment or student-on-student harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student or employee who was harassed.

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color, or national origin under any program that receives federal financial assistance. The Title VI regulation, at 34 C.F.R. § 100.3(b)(1)(i)–(iv), says a recipient may not, on the basis of race, deny any service or benefit, provide a different service or benefit or provide it in a different manner, subject an individual to separate treatment, or restrict an individual in the enjoyment of a benefit or service.

In determining whether a recipient subjected a student to discrimination on the basis of race, OCR considers whether the recipient treated similarly-situated students differently on the basis of race. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the information shows that the recipient treated the student in a manner that is inconsistent with its established policies, practices, and procedures and whether any other evidence of discrimination based on race exists.

### **Facts**

During the XXXXX school year, Student A was a XXXXX student XXXXX, along with Student B and other students enrolled in Corporation schools. Student B was a XXXXX male student at the Corporation's XXXXX (the School). At the start of the school year, Students A and B were assigned to the same XXXXX

Parent A told OCR that Student B touched Student A inappropriately on one instance on the Corporation XXXXX, and that he informed Corporation personnel of the action, but the Corporation did not interview the parties or witnesses he identified, take appropriate action against Student B, or inform Parent A of the outcome of any investigation. Parent A said the Corporation's lack of appropriate response constituted discrimination based on sex and race.

Parent A stated that because Student A is black and Student B is white, the Corporation was unwilling to investigate the allegations.

Between XXXXX, Parent A and Parent B both reported alleged sexual harassment of Student A XXXXX to Corporation personnel. In particular, Parent A said he told XXXXX verbally on XXXXX that Student B XXXXX Parent B reported by phone the touching to the Corporation's XXXXX that a student touched and rubbed Student A's XXXXX. According to the XXXXX, on XXXXX, the XXXXX reported to the XXXXX that Student A had identified Student B to her.

Parent A told OCR that he also identified witnesses to the XXXXX, including XXXXX and students who sat near Student AXXXXX. The XXXXX denied that Parent A identified potential witnesses and said he did not make any efforts to interview Student A or other students XXXXX but rather referred the matter to the School's Principal for possible investigation.

On XXXXX, the Principal notified Student B's parents that the Corporation received a report that Student B may have inappropriately touched another student XXXXX. The Principal said XXXXX Student B denied the allegation. The Principal said he did not request to interview or talk to Student B because he had only received "unsubstantiated claims of a sexual nature" by a XXXXX student and did not have any proof that Student B was the student involved.

While the Corporation procedures<sup>2</sup> specify that it will interview the complainant and other witnesses, prepare a written decision, and notify the parties in writing of the outcome, the Corporation took no further action to assess or investigate the alleged sexual harassment of Student A. The Principal told OCR he had concerns that the information provided by both of Student A's parents was changing and the physical description in the initial report did not match Student B's appearance. The Principal acknowledges that he never contacted either of Student A's parents, in accordance with Corporation procedures, to ask any questions about their allegations.

The Corporation documented that during the XXXXX school year it investigated 13 other sexual harassment complaints, including one by a black student alleging sexual harassment by a white student. The Corporation investigated each of these 13 incidents to determine whether the alleged harassment occurred, irrespective of the race of the students involved, and disciplined white students found to have engaged in sexual harassment.

The Corporation has a non-discrimination statement (Policy 2260) that identifies its Assistant Superintendent as the "compliance coordinator."<sup>3</sup>

## **Analysis and Conclusions**

### **Allegation 1**

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<sup>2</sup> <https://go.boarddocs.com/in/washington/Board.nsf/goto?open&id=BE5KJ3520878#>

<sup>3</sup> <https://go.boarddocs.com/in/washington/Board.nsf/goto?open&id=BE5KJ3520878#>

OCR has concerns that the Corporation may not have assessed or investigated appropriately the reports of harassment by Parent A and Parent B, including by conducting interviews with Student A, Parent A, Parent B, and Student B.

In accordance with Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the Corporation expressed interest in resolving Allegation 1 under Section 302. OCR determined that a resolution agreement with the Corporation is appropriate for Allegation 1.

### Allegation 2

With respect to Allegation 2, the evidence was insufficient to show that the Corporation's actions were related to Student A's race. Parent A did not identify race-based comments or other evidence that the Corporation's handling of Student A's report was based on race beyond the race of the students involved. The evidence showed that, regardless of the race of the students involved, the Corporation conducted investigations and disciplined students found to have engaged in sexual harassment. OCR found no evidence that the Corporation engaged in different treatment of Student A based on race or otherwise discriminated against Student A based on race. Accordingly, OCR determined that there is insufficient evidence to establish a violation of Title VI as alleged in Allegation 2.

### Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The 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 has a right to appeal OCR's determination regarding Allegation #2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

It is also important for you to understand that the laws OCR enforces also prohibit the Corporation from harassing, coercing, intimidating, or discriminating against any individual

because the individual has filed a complaint or participated in the complaint resolution process. If this happens, that individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank the Corporation for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Ms. Caren L. Pollack, Counsel for the Corporation. If you have any questions regarding this matter, please contact Salina Lopez, Senior Equal Opportunity Specialist, at 312-730-1627 or by email at [Salina.Lopez@ed.gov](mailto:Salina.Lopez@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Ms. Caren L. Pollack (sent via email to [cpollack@pollacklawpc.com](mailto:cpollack@pollacklawpc.com))