



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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September 18, 2019

Dr. Jane Belmore
Interim Superintendent
Madison Metropolitan School District
545 West Dayton Street
Madison, Wisconsin 53703

OCR Case No. 05-19-1403

Dear Dr. Belmore:

On March 22, 2019, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Madison Metropolitan School District (District). On July 12, 2019, OCR opened an investigation into the Complainant's allegation that from October 25, 2018 through January 14, 2019, the District did not adequately address the Complainant's reports that District students were retaliating against Student A and Student B because of XXXX.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 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 (FFA). As a recipient of FFA from the Department, the District is subject to the requirements of Title IX. Therefore, OCR has jurisdiction over the complaint allegation.

During its investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and seven District staff members. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). On September 16, 2019, the District signed the enclosed Resolution Agreement, which when fully implemented will resolve the issues raised in the complaint. A description of OCR's investigation to date follows.

Applicable 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 implementing regulation, at 34 C.F.R. § 106.71, incorporates by reference the procedural provisions applicable to Title VI of the Civil Rights Act of 1964, which at 34 C.F.R. § 100.7(e), states "no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege ... because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part."

Facts

Student A, Student B and Student C were enrolled at XXXXXXXX High School (School) in the District at the start of the 2018-19 school year; Student A (female) was in 11th grade, Student B (female) was in 9th grade, and Student C (female) was in the 11th grade. On October 25, 2018, the Complainant sent a written complaint to the District's General Counsel asserting that XXXXXXXX. The General Counsel contacted the School Principal to advise him of the complaint, and the Principal asked an Assistant Principal to investigate. The District investigated the incident and was unable to conclude that Student C had violated the District's discipline code, the Behavior Education Plan, which prohibits sexual harassment and sexual assault. The Assistant Principal notified the Complainant of the determination in writing on XXXX.

While the Assistant Principal was investigating the complaint, the School put a "Conflict Safety Plan Agreement" (Safety Plan) in place for Student A and Student C. XXXX.

According to the Complainant, after she reported Student C's XXXX, Student C and several of her friends harassed and threatened Student A and Student B XXXX. The Complainant told OCR that she repeatedly reported her concerns about Student C and her friends to School and District staff, but despite her complaints, Student C and her friends continued to harass and threaten Student A and Student B.

On XXXX, the Complainant contacted the School Principal and reported Student A and Student B were being harassed by XXXXXXXX students. The Complainant told OCR that XXXXX students XXXXXXXX of Student C¹ and that she told the Principal the students started harassing and threatening Student A and Student B because XXXX.² In response to his conversation with the Complainant, the Principal sent an email on XXXX (Principal's email) to School and District staff informing them that the Complainant had reported harassment and that Student A and Student B agreed to XXXX. The Principal's email directed staff to inform the students identified as harassing Student A and Student B that they would be held to the same standards as Student A and Student B. The email identified the steps Student A and Student B should take if any of the prohibited behaviors occurred, XXXX.

The Director of Student Services Operations and Accountability sent the Complainant a copy of the Principal's email; however, the District was unable to provide documentation showing that the District notified Students XXXXX or their parents about the no contact requirements or investigated the Complainant's initial report to determine whether the students were harassing Student A and Student B, and if so, whether the conduct reported by the Complainant was in retaliation for Student A's prior protected activity.

The Complainant subsequently made numerous reports that Students XXXXX continuously violated the no contact requirements XXXX. The District investigated some of the incidents and determined the conduct did not occur. The District reported to OCR that it investigated other

¹ The Complainant told OCR that conflicts between the XXXX student identified and Student B were not related to XXXX.

² The Complainant did not provide OCR documentation to substantiate the content of her report and the Principal did not keep notes of the conversation he had with the Complainant.

reports; however, the District did not document steps taken during the investigations and staff interviewed by OCR could not recall specific details about the investigations and conclusions. In one instance, the District indicated that there was no formal investigation of a report made by the Complainant, stating that she made the report in response to Student A being reprimanded for an unrelated matter and that Student A had not reported the conduct pursuant to the steps identified in the Safety Plan.

The District did not provide OCR documentation to demonstrate that in response to the Complainant's reports of possible retaliation, it made determinations as to whether the reported conduct occurred, or whether it additionally determined whether the conduct constituted retaliation for the Complainant's prior protected activity, and that it notified the Complainant of its determinations.

The last date on which Student A and Student B attended school in the District XXXXXXXX. Students A and B attend XXXXXXXX.

Conclusion

Based on the investigation to date, OCR has identified possible concerns with the District's response to complaints of conduct that may constitute retaliation for engaging in an activity protected by Title IX and its record-keeping regarding its investigations of such complaints made it difficult for OCR to make a compliance determination. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint pursuant to Section 302 of the CPM. In accordance with Section 302 of the 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. OCR determined that a resolution agreement with the District is appropriate under the circumstances presented by this case. The enclosed Resolution Agreement, when fully implemented, will address the allegation that OCR investigated. The provisions of the Resolution Agreement are aligned with the allegation in the complaint and the information obtained during OCR's investigation to date and is consistent with the applicable regulations. OCR will monitor the implementation of the Resolution Agreement.

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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment. The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

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 District, as well as Mr. Matthew Bell, the General Counsel for the District, for the courtesy and cooperation extended to OCR during the investigation. OCR looks forward to working with the District during the monitoring of the Resolution Agreement. If you have any questions, please contact Ms. Catherine Martin, Equal Opportunity Specialist, at (312) 730-1592 or by email at Catherine.Martin@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

cc: Matthew Bell