



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
230 SOUTH DEARBORN ST., 37TH FLOOR
CHICAGO, IL 60604

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September 30, 2021

Dr. Scott Syverson
Superintendent
North West Hendricks School Corporation
Sent via email only to syversonsc@hendricks.k12.in.us

Re: OCR Docket #05-20-1023

Dear Dr. Syverson:

This letter is to notify you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR), received against North West Hendricks School Corporation (Corporation), alleging discrimination based on sex and also alleging retaliation.

Specifically, the complaint¹ alleged the following:

1. the Corporation discriminated against female students based on sex by failing to respond appropriately to their reports of sexual harassment; and
2. the Corporation retaliated against individuals for reporting sexual harassment and/or objecting to the Corporation's responses to reports of sexual harassment.

OCR determined that the Corporation failed to comply with Title IX regarding Allegation #1. Prior to OCR making a finding regarding Allegation #2, the Corporation agreed to the enclosed Resolution Agreement to resolve both allegations. The bases for OCR's determinations are described below.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation, 34 C.F.R. Part 106,² which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the Corporation is subject to Title IX.

During its investigation, OCR reviewed information provided by the Complainants and the Corporation and interviewed current and former Corporation personnel, the Complainants, and other individuals identified by the Complainants.

¹ OCR received three separate complaints in October and November 2019 against the Corporation alleging similar allegations. OCR combined the complaints into a single docket.

² Amendments to the Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, OCR investigated this complaint based on the Title IX regulation that was in effect at the time the alleged incidents occurred. You can find that regulation [here](#).

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.”

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.

Where a school has notice of possible sexual harassment, Title IX requires that it respond appropriately. This could include 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.

The following factors are considered in determining whether an employee has engaged in sex-based harassment in the context of the employee’s provision of aid, benefits or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the conduct in question occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student’s age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not.

The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action and, if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

Facts

The Corporation provided information about 11 incidents of possible sexual harassment in the 2018-2019 and 2019-2020 school years. The incidents included a possible inappropriate relationship between a student and an employee, and possible retaliation toward Corporation employees and against a parent who either attempted to address reports or expressed opinions about the relationship between the student and employee.

Allegation #1

The Complainants alleged that the Corporation did not respond appropriately to reports of possible sexual harassment. The Complainants identified several specific incidents, including the Corporation’s failure to respond appropriately to a report of possible sexual harassment of a XXXXX student XXXXX (Student A) by a XXXXXXXX coach and teacher at the time (Former Coach) at XXXXXXXX. Student A was XXXXX at the time of the reported incidents. Student A XXXXXXXXXXXX at the end of the XXXXXXX school year.

In XXXXXXX, the Corporation received anonymous reports that the Former Coach and Student A were XXXXXXX alone together at XXXXXXXXXXXXXXX. On XXXXXXXXXXX, the Principal at the time (Former Principal) and the Athletic Director at the time (Former Athletic Director) emailed a memo to the Superintendent at the time (Former Superintendent), who also was the Corporation’s Title IX Coordinator. In this memo, the Former Principal and Former Athletic Director informed the Former Superintendent that they spoke to the Former Coach the week of XXXXXXX, about his relationship with Student A “that was perceived by some as inappropriate,” and wrote, “Any other information that might come to light concerning this situation, via the tip line or otherwise, will be fully investigated, but otherwise our investigation is complete at this time.” This memo also advised the Former Superintendent that the XXXXXXXXXXXXXXXXXXXX had stopped, and that “as a further precaution” Student A had been XXXXXXX from being “XX.”

Student A informed OCR that, although the XXXXXXX stopped around XXXXXXX, she remained XXXXXXXXXXXX as an XXXXXXX until XXXXXXX. The Former Superintendent responded by email to the Former Principal, writing, “If there is another allegation or rumor of an inappropriate relationship, let me know prior to any investigatory actions.” The Former Superintendent said he did not ask for notes of the investigation. The Former Superintendent, Former Principal, and Former Athletic Director did not report the conduct to the Indiana Department of Child Services (DCS) or conduct any further investigation at the time.

The XXXXXXXXXXXX's Attendance Officer at that time (Former Attendance Officer) told OCR that he observed personally and on video the Former Coach and Student A in the XXXXXXXXXXXX office XXXXXXXXXXXX on several occasions between XXXXXXXXXXXX and XXXXXXXXXXXX. The Former Attendance Officer also said that he did not report these incidents at the time because he observed on the video that the Former Athletic Director had stopped by the Former Coach's office a few times, so it appeared that the Former Athletic Director was aware of and approved the conduct.

On XXXXXXXXXXXX, the XXXXXXXXXXXX's Dean of Students at that time (Former Dean) received a report from a Hendricks County police officer regarding potentially inappropriate social media or text messages between the Former Coach and Student A. The Former Dean's memo notes that she reported the matter to the Former Principal, who stated that the situation had been investigated.

In another memo dated XXXXXXXXXXXX, the Former Dean reported that the Former Attendance Officer told XX that he had observed the Former Coach with Student A in the XXXXXXXXXXXX office, many times with XXXXXXXX. The Former Attendance Officer said the meeting occurred sometime in XXXXXXXX. The Former Attendance Officer said the Former Dean informed him of the report of inappropriate social media and text messages but told him the report was not believable. The Former Dean's memo of this conversation said the Former Attendance Officer wanted her to call DCS, but she wrote, "I have not seen anything to suspect abuse" and characterized the Former Attendance Officer as "clearly upset and out of control." The Former Dean and Former Attendance Officer did not report to DCS at the time.

The Former Attendance Officer said that a few days after his meeting with the Former Dean, he provided the same information to the Former Principal and offered to help with an investigation. The Former Attendance Officer said that the Former Principal told him he had investigated every report and that nothing had been substantiated. On XXXXXXXXXXXX, the Former Attendance Officer reported the situation to XXXX. According to the Corporation, the Former Superintendent became aware of the XXX report on XXXXXXXXXXXX, and met with the Former Attendance Officer and the School Resource Officer. According to the Corporation, after the meeting, the Former Superintendent "realized that [the Former Principal] failed to share a lot of information with him regarding this situation." On XXXXXXXXXXXX, the Former Attendance Officer sent a letter to the Former Superintendent, in which he detailed what he had seen over the past few weeks.

On XXXXXXXXXXXXXXXX, the Former Superintendent began an investigation by obtaining individual responses to written questions from the Former Principal, the Assistant Principal at the time (Former Assistant Principal), the Former Dean, and the Former Athletic Director. On XXXXXXXXXXXX, the Former Superintendent interviewed these four individuals separately. Also, on XXXXXXXXXXXX, the Former Superintendent informed the Former Coach that he was being investigated for an "inappropriate and/or unprofessional relationship with a student" and that the

last year of XXXXXX and he believed the Board would either XXXXXXXXXXXXXXXXXXXX
XX
XX. He said
he believes that he XXXXXXXXXXXX in retaliation for how he handled the relationship between
the Former Coach and Student A. The Board President at the time informed OCR that the
Former Superintendent initiated the discussion of XXXXXXXXXXXXXXXXXXXX. The Corporation
asserted that the XXXXXXXXXXXXXXXXXXXXXXXXXXXX was not related solely to the
relationship between the Former Coach and Student A but provided no additional details in
response to OCR’s request for an explanation of why the School Board believed
XXXXXXXXXXXXXXXXXXXXXXXXX was necessary and/or appropriate.

The Corporation gave OCR a copy of the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX,
Superintendent XXX;
the agreement says it is voluntary and says, “By this Agreement the Parties release each other
from any and all claims, causes of action, demands, and liabilities of whatever nature which
either Parties has in the past, has now, or may have in the future arising from or related to the
Contract.”

Other Alleged Retaliation

The Corporation provided information indicating that three employees were alleged to have
expressed opinions to students about the interactions between the Former Coach and Student A.
In response, the Corporation warned a XXXX coach and the XXXXXXXXXXXXXXXXXXXXXXXX
against making such comments and suspended a substitute teacher for the remainder of the
XXXX-XXXX school year.

A parent also informed OCR that XXX son (Student G) was retaliated against after she
expressed XXX opposition during a School Board meeting to the actions of the Corporation in
connection with the relationship between the Former Coach and Student A, in that the Former
Athletic Director in XXXXXXXXXXXXXXXX asked Student G about his home life and the Former
Dean subsequently prohibited Student G from seeing a XXXXXXXXXXXXXXXXXXXX. The
Corporation informed OCR that it had no information about whether the Former Athletic
Director met with Student G but asserted that it is routine for personnel to discuss home life with
students and that this action was not adverse, even if it happened as asserted; the Corporation
also noted that its records show that Student G’s parent first spoke at a Board meeting in
XXXXXXXXXXXXXXXXXXXXX, after the asserted adverse action by the Former Athletic Director.
The Corporation also informed OCR that it had no information about whether the Former Dean
had met with Student G but asserted that there was no relationship between any such meeting
and the comments to the School Board by Student G’s parent.

Conclusions

OCR determined that the Corporation failed to comply with Title IX in its responses to sexual
harassment complaints. In particular, the Corporation did not, when it became aware of a

possible inappropriate relationship between the Former Coach and Student A in XXXXXXXXXX promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The Corporation failed to conduct a prompt, thorough, and impartial inquiry of the alleged misconduct. In the cases of Student A, Student B, and Student E, the Corporation failed to take steps to prevent further harassment. While the Corporation ultimately terminated the Former Coach and the individuals who it determined should have taken action when they received reports about the Former Coach's actions, these actions were delayed during which time the Former Coach continued to sexually harass Student A. In addition, the Corporation did not inform Student A or XXX parent of the outcome of any investigation, and the Corporation provided insufficient documentation to show that it provided her or other parties with supportive services. In the other cases, the Corporation also failed to separate students in order to prevent further harassment.

In addition, OCR has concerns that the Corporation does not have a system that adequately and accurately preserves records required by Title IX. Regarding the alleged retaliation, OCR has concerns that the Former Superintendent and the Former Attendance Officer, the employees who appeared to take the allegations about the Coach seriously and take action to address them, are XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, suggesting that they may have been subjected to adverse actions for their protected activities of reporting and investigating the alleged harassment of Student A by the Former Coach. OCR has not yet made a determination whether the Corporation's actions constituted prohibited retaliation.

The enclosed Agreement, when fully implemented, will address the identified violations and concerns. The provisions of the Agreement are aligned with the allegations in the complaint and the information obtained during OCR's investigation to date and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's resolution activities regarding 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.

Please be advised that the Corporation may 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 another complaint alleging such treatment.

OCR would also 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.

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

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Page 11 – Dr. Syverson

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. Jessica Heiser, Counsel for the Corporation. If you have any questions regarding this matter, please contact Alonzo Rivas, OCR Attorney, at 312-730-1684 or by email at Alonzo.Rivas@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Jessica Heiser (sent via email only to jheiser@cchalaw.com)