



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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March 27, 2018

Ms. Dustie Gunn-Ader, Principal  
Copper Point Schools  
732 W. Roger Rd.  
Tucson, AZ 85705

*Sent via email only to [dustie.gunn-ader@copperpointschools.org](mailto:dustie.gunn-ader@copperpointschools.org)*

Re: Innovative Humanities Education Corporation  
OCR Case Number: 08-17-1518

Dear Ms. Gunn-Ader:

We write to advise you of the resolution of a complaint that was filed with our office against Innovative Humanities Education Corporation, which operates Copper Point Schools (the Recipient) alleging discrimination on the basis of sex.

Specifically, the Complainant alleges that the Recipient subjected his daughter to a hostile environment based on sex, and failed to adequately respond to his reports of ongoing harassment. The Complainant also alleges that the Recipient retaliated against him by providing his daughter's disciplinary records, which he believes were inaccurate and incomplete, to another school.

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) is responsible for enforcing Title IX of the Education Amendments of 1972 and its implementing regulation at 34 Code of Federal Regulation Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education. Individuals filing a complaint, participating in an investigation, or asserting a right under Title IX are protected from intimidation or retaliation by 34 C.F.R. § 106.71, which incorporates 34 C.F.R. § 100.7(e). As a recipient of Federal financial assistance from the Department and a public entity, the Recipient is subject to these laws and regulations.

In the course of the investigation, OCR reviewed documents provided by the Recipient the Complainant. We interviewed the Complainant, and OCR also held discussions with the Principal and interviewed the school's registrar. We found insufficient evidence that the Recipient retaliated against the Complainant or the Student. Prior to the completion of OCR's investigation, the Recipient agreed to resolve the hostile environment allegation, pursuant to Section 302 of OCR's Case Processing Manual. We determined it was appropriate to resolve this allegation without completing a full investigation of this issue.

### *Retaliation Allegation*

The Student attended seventh grade at Copper Point Schools during the 2016-17 school year. The student enrolled at the school in October 2016, and continued to the end of the school year.

The Complainant applied to another school for the Student for the 2017-18 school year, School B. School B sent a request for records to the Recipient in April. The Complainant alleged that the Recipient sent records to School B that included false disciplinary records, and that this was in retaliation for his previous complaints, including complaints of sexual harassment. The Complainant told OCR that School B did not admit the Student based on these records.

OCR reviewed the request for records the Recipient received from School B. The Student Record Transmittal Request, on School B's letterhead, is dated April 27, 2017, and the time stamp from the fax machine indicates it was sent that same day. The request includes a list of records with check boxes. The boxes are checked for Testing (specifically requesting sixth grade AZ Merit scores) and Disciplinary Records.

OCR interviewed the Recipient's Registrar, who is the school official who handles records requests from other schools. The Registrar told OCR that when she received the request, she notified the Principal and the Dean to let them know that it looked like the Student was going to withdraw. She told OCR that neither the Principal nor the Dean gave her any special instructions with regard to the records request, and she handled it in the same manner she handles other requests. She described that when she receives a request, she looks at what information is being requested, prints that information from Jupiter, the school's system for managing student records, and sends that information to the requesting school. In this case, she noted that testing scores and disciplinary records were requested. She told OCR she printed the disciplinary records to send, but noted that the school did not have the Student's test scores from sixth grade as she had not attended the school that year.

OCR reviewed the disciplinary records the Registrar sent to School B. There are six entries:

- 11/8/16, a "general concern" was noted about the Student another student having "attitudes" with each other, which was becoming a distraction. (The Recipient's response indicated that teachers can flag a "general concern" in the system for issues that haven't risen to the level of a disciplinary problem, but that administrators may want to be aware of and address.)
- 1/10/17, another "general concern" described an incident involving another student on the bus, who the Student was not supposed to have contact with.
- 1/25/17, a "gum/food" violation was entered, indicating the Student received detention.
- 1/30/17, a "class disruption" was noted, indicating that the Student would not stay in her seat and was running in class. This was referred to the "Crew Leader."
- 2/2/17, an incident was entered for "profanity" and "disrespect of staff," stating that the Student told the teacher she was not doing a f---ing thing, also referred to the Crew Leader.

- 4/20/17, another “general concern” described a situation that occurred in the office where another student pushed a door hard that almost hit the Student; this was the same student that was not supposed to have contact with the Student.

In analyzing a retaliation claim, we first determine whether: the individual experienced an adverse action caused by the recipient; the recipient knew the individual engaged in an activity protected by Title IX or believed the individual might engage in an activity protected by Title IX in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the recipient has a legitimate, non-retaliatory, reason for its action; and whether such reason is a pretext for retaliation.

OCR will assume for the purpose of this analysis that the Student experienced an adverse action. OCR typically would not consider the release of records to another school under these circumstances to be adverse; however, because the Complainant alleged that these records resulted in the Student not being admitted to the other school, we will move forward with the analysis. OCR also finds that the Complainant engaged in a protected activity when he made multiple complaints to the Recipient that the Student was being sexually harassed at school. Additionally, while there is no direct evidence of a causal connection between the alleged adverse action and the protected activity, a causal connection may be inferred based on proximity in time, as the Complainant’s protected activity was ongoing at the time the records were sent.

The Recipient provided a legitimate, non-retaliatory reason for sending the records to the other school: it was responding to a routine records request, and sent the records requested. Next, we consider whether this reason genuine, or whether it is a pretext for unlawful retaliation. The evidence shows that the Complainant applied for the Student to attend School B, and that School B sent a request for the Student’s disciplinary records to the Recipient. The evidence further shows that the Registrar handled the request in accordance with her usual practice by printing out the records requested and sending them.

The Complainant told OCR that the records were released “without authorization,” and the records were “false.” While the Complainant may dispute the accuracy of the described incidents, there is no indication from the evidence reviewed that these are not the genuine disciplinary records for the Student maintained throughout the school year, or that they were sent for any reason other than the request from the other school. We find that the Recipient’s reason for sending the records is not a pretext for retaliation.

Accordingly, we conclude that the Recipient did not retaliate against the Complainant or Student as alleged.

#### *Hostile Environment Allegation*

The Complainant also alleges that the Recipient subjected his daughter to a hostile environment based on sex, and failed to adequately respond to his reports of ongoing harassment. On March 23, 2018, prior to OCR completing its investigation or making any findings of fact, the Recipient

signed an Agreement which, when fully implemented, will address the hostile environment allegation raised in the complaint.

In accordance with Section 302 of OCR's *Case Processing Manual* (CPM), the provisions of the Agreement signed by the Recipient are aligned with the hostile environment allegation of the complaint and the information obtained during OCR's processing of this case, and consistent with the applicable regulations. Therefore, OCR is closing the investigation of the hostile environment allegation effective the date of this letter. OCR, however, will actively monitor the Recipient's implementation of the Agreement until the Recipient fulfills the terms of the agreement and is in compliance with the statutes and regulations at issue in this case. If the Recipient fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement or resume its investigation of the initial allegations. A copy of the Agreement is enclosed.

Please be advised that the Recipient 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. In addition, the Complainant 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact XXXX XXXX, the attorney assigned to this case, at (303) 844-XXXX or xxxx.xxxx@ed.gov. You also may contact me at (303) 844-5942.

Sincerely,

/s/

Sandra J. Roesti  
Supervisory Attorney

Enclosure: Signed Resolution Agreement

cc: Diane Douglas, State Superintendent of Public Instruction (via email)