



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

October 29, 2020

*Via Email: [jonathan.phipps@lcsdmail.net](mailto:jonathan.phipps@lcsdmail.net)*

Dr. Jonathan Phipps  
Superintendent  
Lancaster County School District  
300 Catawba Street  
Lancaster, South Carolina 29720

Re: OCR Complaint No. 11-19-1377  
Resolution Letter

Dear Dr. Phipps:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on May 31, 2019 against Lancaster County School District (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of sex. Specifically, the complaint alleged that the District failed to promptly and equitably respond to a report that two XXXXX students (Students A and B) sexually harassed the Student when they XXXXX on XXXXX, including when the District subsequently inappropriately disciplined the Student for defending himself from the sexual harassment.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department.<sup>1</sup> Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

### **Summary of Investigation**

During the investigation, OCR reviewed documents provided by the Complainant and the District; interviewed District staff; and, XXXXX XXXXX of the XXXXX class during which the incident

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<sup>1</sup> An amended Title IX regulation went into effect on August 14, 2020 and can be viewed [here](https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html). However, the Title IX regulation in effect at the time of the underlying events associated with the above-referenced complaint serves as the basis for OCR's determination in this matter, which is available [here](https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

of harassment allegedly occurred on XXXXX, as well as of the Student otherwise interacting with Students A and B at the School during the XXXXX.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, because the investigation has identified issues that can be addressed through a resolution agreement.

### **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 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. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR will evaluate a recipient's good faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms.

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.

Under Title IX, a recipient 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 recipient to take interim or supportive 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 class schedules, escorts between classes, restrictions on contact between the parties, 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 recipient may decide to place the students immediately in separate classes, pending the results of the recipient's investigation.

### **Evidence Obtained to Date**

The Student was a XXXXX student at the School during the XXXXX school year. According to information and documentation provided by the District and the Complainant, during XXXXX

class on XXXXX, the Student was playing XXXXX. Students A and B approached the Student multiple times and XXXXX XXXXX at him to gain his attention. XXXXX. The District informed OCR that the XXXXX teacher subsequently radioed for the assistance of a School administrator, and one of the School's XXXXX came to the XXXXX.

*The School's Investigation*

XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX

*The School's Determination and Disciplinary Sanctions*

XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX

*Notice of the Investigation Outcome and Disciplinary Sanctions*

After completing her investigation and imposing discipline on all three students on XXXXX, that same day, the XXXXX contacted and held conferences with Students A and B and their parents, wherein she informed the parents of the incident and the disciplinary sanctions imposed for sexual harassment and fighting. The XXXXX stated that she reviewed the District's Harassment, Intimidation, or Bullying policy (the Policy) with Student A and B, and they signed statements acknowledging the Policy.

The Complainant asserted to OCR that when the XXXXX contacted her on XXXXX XXXXX, the XXXXX told her that the Student had received a referral for fighting on XXXXX and needed to be picked up from the School. The Complainant stated that, at the conference, the Student said that he had been fighting because Students A and B had sexually harassed him, and she asked the XXXXX about it. The Complainant stated that the XXXXX acknowledged the interaction between the students, but the XXXXX did not state that she had investigated or that she substantiated that the Student had been sexually harassed; rather, the XXXXX XXXXX.

During her interview with OCR, the XXXXX stated that she notified the Complainant that there was an altercation in the XXXXX and that the Student had been suspended. The XXXXX informed OCR that she believed that XXXXX but she did not know whether she used the words "sexual harassment." The XXXXX stated that during her conference with the Complainant, the Complainant asked to see the XXXXX of the incident, and the XXXXX XXXXX, as discussed below.

Following her conference with the XXXXX, the Complainant contacted the District's Board of Education, and the XXXXX was directed to respond. The XXXXX also served as the District's XXXXX. The XXXXX stated that when he contacted the Complainant, she voiced concerns about the discipline that the Student received as a result of the incident compared to the discipline she believed Students A and B received.<sup>2</sup> The XXXXX contacted the School to inquire about the situation and obtained permission for the Complainant to XXXXX. He stated that he was asked to evaluate the disciplinary consequences, which he determined were appropriate, but he did not

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<sup>2</sup> The Complainant informed OCR that based on information provided to her by the Student, she believed that Students A and B had only received a XXXXX for the incident.

otherwise assess the School's response to the incident of sexual harassment or follow-up with the Complainant or the School regarding the same.

The Complainant stated that when she returned to the School to review the XXXXX, she requested counseling for the Student from the XXXXX; however, the District did not provide counseling to the Student, and the XXXXX did not recall having notified the guidance counselor about the incident generally.

### **Analysis**

OCR has a concern that during its investigation, the District may not have adequately assessed the need for interim or supportive measures, such as counseling or other services, for the students, particularly the Student, despite the fact that the XXXXX acknowledged that the Student XXXXX; and, that after the completion of the investigation and determination that sexual harassment occurred, the District did not consider the impact of the sexual harassment on the Student in this regard. Instead, the District's response focused primarily on discipline imposed for the incident; the School acknowledged that it did not offer counseling or any other services to the Student. Further, OCR could not assess whether the District's discipline actions were equitable, in part, because the District combined or "bundled" the infractions incurred by each student in assigning discipline to each of them.

OCR also has a concern that the District did not provide the Complainant with adequate notice of the investigation outcome. Although the XXXXX held conferences with the parents of Students A and B, wherein she notified them of the disciplinary consequences imposed on both students for fighting and sexual harassment, and had both students sign statements that they had reviewed and understood the Policy, the XXXXX did not do the same or similar for the Complainant and the Student. In addition, thus far, OCR found no evidence to indicate that the XXXXX specifically articulated to the Complainant that the School determined that Students A and B had sexually harassed the Student, and that the School had taken steps to remedy the sexual harassment. Rather, the evidence obtained to date indicates that in her meeting with the Complainant, the XXXXX focused on the disciplinary consequences the Student received for fighting and not on the sexual harassment.

As previously stated, prior to the completion of OCR's investigation, and to remedy the concerns described above, the District has expressed interest in entering into a resolution agreement (the Agreement) under Section 302 of the *Case Processing Manual*.

### **Conclusion**

On October 26, 2020, the District signed the enclosed Resolution Agreement (the Agreement) which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation.

The Agreement requires that, with the assistance of the District's Title IX Coordinator, the District will: after consulting with the Student and the Complainant, consider whether the Student requires any supportive measures (such as counseling or academic support) in connection with the District's investigation of the incident wherein the District determined that the Student was subjected to

sexual harassment by Students A and B at the School on XXXXX; provide the Complainant with information to ensure that the Complainant and the Student know how to report any additional incidents sexual harassment; and, provide the Complainant with notice of the outcome of its investigation into the incident comparable to that previously provided to the parents of Students A and B.

The Agreement will also require the District to develop and disseminate a memorandum to the District's Title IX Coordinator, as well as all School administrators, regarding the District's/School's obligations under Title IX to provide a prompt and equitable resolution with respect to complaints of student peer sexual harassment and sexual violence. The memorandum shall comply with the terms of the Title IX regulations promulgated by the Department on May 19, 2020, at 85 FR 30026, and will discuss, at a minimum, and with respect to a Title IX resolution process, the District's/School's obligations to: consider whether supportive measures are required for the complainant(s) and respondent(s), and provide simultaneous written notice of the outcome to the complainant(s) and respondent(s). Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This 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 may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must 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 a retaliation complaint with OCR.

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 seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Amy S. Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or [amy.williams2@ed.gov](mailto:amy.williams2@ed.gov).

Sincerely,

Letisha Morgan-Cosic  
Team Leader, Team II  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc (Via Email): XXXXX, Counsel for the District  
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