



**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

September 13, 2023

By email only to [sjellis@ncpschools.net](mailto:sjellis@ncpschools.net)

Dr. Stephen Ellis  
Superintendent  
Nash County Public Schools  
930 Eastern Avenue  
Nashville, NC 27856

Re: Case No. 11-22-1543  
Nash County Public Schools

Dear Dr. Ellis:

This letter advises you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of Nash County Public Schools, which we will refer to as the District. OCR investigated whether staff at the District's Nash Central High School discriminated against female students on the basis of sex by failing to respond as required by Title IX to reports female students made to School staff in September 2022, in which they stated that they felt unsafe in school as a result of a threat of sexual violence made online (Allegation 1); and with respect to implementation of the District's dress code (Allegation 2).

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. The District receives federal financial assistance from the Department of Education, so OCR has jurisdiction over it pursuant to Title IX.

OCR reviewed information provided by the Complainant and the District and listened to an audio recording of a September 12, 2022, assembly held at the School. Before OCR completed its investigation, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following summarizes the evidence OCR obtained and the concerns OCR identified.

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## **Facts**

### Social Media Posts

OCR determined that during the first week of school year 2022-2023, someone posted anonymously on an Instagram account entitled “[redacted content]” that he was a [redacted content] and might force one of the “freshman bitches” to have sex with him (the fall 2022 post). The account had over 900 followers at the time the fall 2022 post was made; and the post received dozens of likes and comments.<sup>1</sup> The Complainant asserted that students verbally notified School employees of the fall 2022 post and informed the employees that the post made them feel unsafe in school; and the Complainant stated that she knew of [redacted content] who showed the post to School staff.

The District asserted to OCR that School staff did not know about the fall 2022 post prior to an assembly held at the School on September 12, 2022, discussed below. The District acknowledged that at the beginning of the 2022-2023 school year, school administrators received complaints from students regarding other anonymous posts to social media pages that were “inappropriate and inflammatory,” but stated that these posts did not include “threats of sexual assault or rise to the level of sexual harassment.” However, correspondence OCR reviewed showed that the School was generally aware of potentially harassing social media posts, including posts of a sexual nature, as early as February 10, 2022 when an Assistant Principal at the School emailed a District staff member about investigating an Instagram account with “mostly negative comments” that included “sexual content and bullying.” Additionally, on September 2, 2022, a school administrator emailed a District computer technician the names of [redacted content] allegedly responsible for maintaining the “[redacted content]” account, in an effort to determine who was operating the account. The District computer technician informed the administrator that the District could not determine whether the students were involved with the account.

### Dress Code

On September 1, 2022, a day or two after the fall 2022 post was made, an assistant principal at the School (Assistant Principal 1) emailed all students to remind them of the District’s dress code. The District’s dress code prohibits clothing that is substantially disruptive, provocative or obscene, and identifies examples of prohibited attire, such as clothes with lewd messages; clothes that are see-through, excessively short or tight; sagging pants; strapless shirts; and clothes that expose one’s undergarments, midriff or cleavage. The District’s dress code states that schools can require a student to change clothes that are not compliant; and that violations of the dress code may result in discipline. The School’s handbook similarly prohibits clothing that is disruptive, suggestive, or revealing, including short shorts or skirts, bare midriffs, strapless shirts, halter tops, sagging pants, bandanas, headbands, and “tank tops, muscle shirts – Males.”

Pursuant to the District’s discipline policy, a first violation of the dress code shall result in an administrative conference, and subsequent violations shall result in an in-school suspension.

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<sup>1</sup> The account was one of four online social media accounts known to School administrators as places where students would post about one another, often anonymously.

However, the District informed OCR that in practice, it issues a warning for a first offense; and that subsequent offenses may result in a referral and administrative conference. The District informed OCR that the School issued ten referrals for dress code violations between 2021 and 2023, five of which were issued to boys and five to girls. Nine of the ten referrals were for not taking off a hood or hat and resulted in an administrative conference. The tenth was issued to a girl [redacted content]; the School issued the girl an in-school suspension.<sup>2</sup>

### Girls-Only Assembly

On September 12, 2022, the School held an all-girls assembly. The District told OCR that the assembly was intended to address “female issues of non-compliance” with the dress code and reports regarding “inappropriate [anonymous] messages [on] social media”; and was intended “to empower female students” and remind them to comply with Board policies, including the dress code. OCR listened to audio recording of the assembly and determined that during the assembly, Assistant Principal 1 said to the female students “don’t come to us” regarding concerns about social media if “you don’t have proof of who’s writing” the post, because “we don’t have time for the drama.” Additionally, Assistant Principal 1 and another assistant principal (Assistant Principal 2) told the female students that they “should not have to spend countless hours telling [the female students] to come to school appropriately dressed” and that their “shorts are too short [and]...no skin on [their] stomach should be showing”; that they should “save the showing of [their] bodies for later because [they will] be the same one that comes to [School staff] talking about ‘look what they put on the [redacted content] [social media] page’”; and that they were “opening the door for [them]selves.” One of the Assistant Principals also stated during the meeting, with respect to attire, that she was “going to protect [her]self, which is what [the female students] should be doing”; and that the female students gave male students “everything they want to see in a female” and then “wonder why they disrespect you.”

Assistant Principals 1 and 2 also discussed other concerns about student conduct during the assembly. Specifically, they warned the female students not to hang out or vape in bathrooms and noted that “we’re coming for you ladies”; and advised the female students not to fight, saying “guys...instigate stuff with you all because they want to see a cat fight and you all are so naïve you give them what they want.” During the assembly, Assistant Principal 2 told the female students to let her or Assistant Principal 1 know if anyone had information about who was responsible for any concerning social media accounts or posts.”

Following the assembly, a number of parents contacted the School to share concerns that during the assembly, School staff blamed female students for harassment by male students and discouraged female students from reporting misconduct. On September 13, 2022, the School’s Principal emailed all parents to explain that the assembly was held due to concerns female students reported about inappropriate social media; and was intended to support and empower female students and to address dress code compliance, since many of the social media posts referenced clothing. In the email, the principal stated that the School would hold a boys’ assembly later that week and would work with law enforcement to address inappropriate social media posts. The

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<sup>2</sup> Of the ten referrals, one was in Fall 2021, seven were in Spring 2022, and two were in Fall 2022, both of which were issued to girls – one for wearing a hood, the other for wearing the [redacted content].

District has not, to date, provided information to OCR indicating that any such assembly was held for male students at the School.

By email sent on September 14, 2022, the Principal notified parents that he had reviewed audio from the assembly, and that based on the audio, he understood if students felt “unheard” or “blame[d].” That same day, a parent emailed the school resource officer (SRO) screenshots of the fall 2022 post. The SRO forwarded the email to School administrators that day. The District informed OCR that local law enforcement investigated the fall 2022 post; however, the District did not provide to OCR any specific information regarding its response to receipt of notice of the post.

### Policy Regarding Sexual Harassment

The District has established policies prohibiting sex discrimination and sexual harassment, as well as grievance procedures that address sexual harassment. The policies provide, among other things, that students can report sexual harassment to any school employee and that a Title IX Coordinator will contact someone who has reported sexual harassment within three days to offer supportive measures and to explain how to file a formal complaint.

### Legal Standard

Title IX and its implementing regulation, at 34 C.F.R. § 106.31(a)-(b), prohibit a school from excluding, denying benefits to, or otherwise treating any person differently on the basis of sex in its education programs or activities, unless expressly authorized to do so under Title IX.

The Title IX regulation requires schools 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 an individual’s ability to participate in or benefit from the school’s education program or activity.

When a school has knowledge of sexual harassment in its education programs and activities, it must take appropriate steps to investigate or otherwise determine what occurred, explain the process for filing a formal complaint, and inform the parties of the availability of supportive measures. Supportive measures are non-disciplinary individualized services offered as appropriate to the parties involved in an alleged incident of sexual misconduct and designed to restore or preserve equal access to a school’s programs and activities, including to protect their safety.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether a school treated an individual less favorably than similarly situated individuals of a different sex or due to sex-based stereotypes. If so, OCR then determines whether the school

had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the school is a pretext, or excuse, for unlawful discrimination.

### **Analysis**

With respect to Allegation 1, OCR has concerns, based on information obtained to date, that the District did not respond as required to notice of possible sexual harassment occurring on social media that involved students at the School and may have impeded students' access to the School's education program and activities. Although the District asserted that it had no actual knowledge of harassing social media posts of a sexual nature involving School students prior to September 14, 2022, documentation OCR reviewed suggests that the District was aware of such posts prior to September 14, 2022, and as early as February 2022. The District's student-focused response to these posts appears to have been limited to the girls-only assembly held on September 12, 2022, during which School staff made comments that appeared to blame female students for the conduct at issue. Additionally, after receiving a screenshot of the fall 2022 post on September 14, 2022, in which a threat of sexual violence against female students was made, the District appeared to defer any investigation to law enforcement. OCR has not seen evidence to date that the District investigated or responded to any concerns raised regarding the fall 2022 post or any other social media post that included sexually harassing content; considered the need for supportive measures in response to any such social media post; or directed students and parents to its Title IX grievance procedures or Title IX coordinator in response to concerns raised regarding any such social media post.

With respect to Allegation 2, OCR has concerns, based on information obtained to date, that notwithstanding the stated purpose, the District separated students based on sex without justification by holding an assembly only for female students to address compliance with the dress code; and told female students during the assembly that they should "save the showing of [their] bodies for later" and that dressing certain ways "opened the door" to boys disrespecting them. OCR did not obtain evidence that the District formally planned or held a boys-only assembly or otherwise addressed male students regarding the dress code despite the fact that half of the dress code disciplinary incidents from the past two school years involved boys. OCR is concerned that the District's stated purpose for holding the girls'-only assembly included an interest in addressing the potentially harassing on-line posts, which bore no actual relationship to the girls' dress code compliance.

Before OCR completed its investigation of the complaint, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On September 7, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegations investigated. OCR will monitor the District's implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

## **Conclusion**

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. 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.

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

OCR appreciates the District's cooperation during the resolution of this complaint. If you have any questions, please contact Ravan Austin at 202-377-4178 or [Ravan.Austin@ed.gov](mailto:Ravan.Austin@ed.gov) or Sara Clash-Drexler at 202-987-1386 or [Sara.Clash-Drexler@ed.gov](mailto:Sara.Clash-Drexler@ed.gov), the OCR attorneys assigned to this complaint.

Sincerely,

Dan Greenspahn  
Team Leader, Team 1  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Patricia Robinson, [PRobinson@tharringtonsmith.com](mailto:PRobinson@tharringtonsmith.com)