UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

230 SOUTH DEARBORN ST., 37TH FLOOR
CHICAGO, IL 60604

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November 29, 2023

Daniel Lennington
Deputy Counsel
Wisconsin Institute for Law & Liberty, Inc.
330 E. Kilbourn Ave., Suite 725
Milwaukee, WI 53202

Sent by email only: Dan@will-law.org

Re: OCR Docket # 05-23-1562

Dear Mr. Lennington:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is opening for investigation the above-referenced complaint filed against the Sun Prairie Area School District (District). You alleged that the District failed to respond to a report of sexual harassment in March 2023.

OCR enforces 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, which prohibit discrimination on the basis of sex in any program or activity operated by a recipient of federal financial assistance from the Department. As a recipient of federal financial assistance from the Department, the District is subject to this law.

OCR has determined that it will investigate the following issue:

- Whether the District responded to a report of sexual harassment consistent with the requirements of Title IX.

Please understand that opening an investigation does not mean that OCR has made a decision about the complaint. During the investigation, OCR is neutral; OCR will collect and analyze the evidence it needs in order to make a decision.

When appropriate, a complaint may be resolved when, prior to the point when OCR completes its investigation, the recipient expresses an interest in resolving the complaint. In such cases, a resolution agreement signed by the recipient and submitted to OCR must address all of the allegations that OCR determines are appropriate to resolve before the conclusion of an investigation. Information about this is in the enclosure to this letter.

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.

It is important for you to understand that the laws OCR enforces also prohibit the District from harassing, coercing, intimidating, or discriminating against you because you filed a complaint or participated in the complaint resolution process. If this happens, you may file another 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, 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 personal privacy.

We will communicate with you periodically regarding the status of your complaint. If you have any questions, please contact Marjorie Rodriguez, Attorney, at marjorie.rodriguez@ed.gov.

Sincerely,

Dawn R. Matthias

Dawn R. Matthias
Team Leader

Enclosure

cc: Cory Brewer
Sent via email only: cbrewer@will-law.org

U.S. Department of Education
Office for Civil Rights (OCR)
COMPLAINT PROCESSING PROCEDURES[1]

LAWS ENFORCED BY OCR

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

EVALUATION

OCR evaluates the written information that it receives to determine whether it constitutes a complaint that is subject to further processing. If so, OCR determines whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of any of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the date of the alleged discrimination. [2] If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; and the complainant has 20 calendar days within which to respond to OCR's request for information unless the complainant has requested additional time to provide the information.

Some of the reasons for OCR's dismissal of a complaint include:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;
- The complaint was not filed timely (within 180 calendar days of the date of the alleged discrimination) and a waiver of the timeliness requirement was not granted;

[1] These procedures are a summary of OCR's Case Processing Manual (CPM); the CPM contains more detailed explanations of OCR's procedures.

[2] Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.

- The allegations raised by the complaint have been resolved and are therefore no longer appropriate for investigation;
- A signed consent form is required to proceed with an investigation and the consent form has not been provided within 20 days of requesting the signed form.

OPENING THE COMPLAINT FOR INVESTIGATION

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that the actions it takes in investigations are legally sufficient, and that its determinations are support by the evidence.

INVESTIGATION OF THE COMPLAINT

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews of the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine, with regard to each allegation, whether:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or

- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a Letter of Findings sent to the complainant and recipient. Letters of Findings contain fact-specific investigative findings and dispositions of individual cases. Letters of Findings are not formal statements of OCR policy, and they 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.

RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION

A complaint under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the complaint **and** OCR determines that it is appropriate to resolve it because OCR's investigation has identified concerns that can be addressed through a resolution agreement. OCR will inform the recipient that this resolution process is voluntary before proceeding to resolution under this section and will notify the complainant of the recipient's interest in resolution. The provisions of the resolution agreement must be supported by the evidence obtained during the investigation and will be consistent with the applicable statute(s) and regulation(s). OCR will monitor a resolution agreement reached with the recipient before the conclusion of an investigation.

RESOLUTION OF THE COMPLAINT UPON A DETERMINATION OF NONCOMPLIANCE

If OCR determines that a recipient failed to comply with the civil rights law(s) that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, OCR and the

recipient will negotiate and the recipient will sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. OCR will monitor the recipient's implementation of the terms of the resolution agreement until such time as OCR determines that the recipient is in compliance with all of the terms of the resolution agreement and the statute(s) and regulation(s) that were at issue in the case.

If the recipient does not agree to correct its noncompliance with the statutes(s) and regulation(s) at issue in the case by entering into a resolution agreement, or if the recipient does not comply with the terms of the resolution agreement and the statute(s) and regulations(s) at issue, OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice for judicial proceedings to enforce the specific terms of the resolution agreement and the applicable statute(s) and regulation(s).

ALTERNATIVE RESOLUTION PROCESSES

Mediation

Mediation is a form of complaint resolution that OCR offers as an alternative to its investigative process. Mediation is an informal process in which a staff member from OCR who is trained in mediation assists the parties to reach a negotiated resolution of the complaint. The mediator does not decide who is right or wrong and does not have the authority to impose a settlement on the parties. Instead, the mediator helps the parties to find a mutually acceptable resolution to your complaint. Mediation is a strictly voluntary process. If either party does not want to participate in mediation, OCR will address the complaint through its regular processes.

OCR offers two mediation options that provide an opportunity for the parties involved to voluntarily resolve the complaint. OCR will determine, on an individualized basis, whether the complaint is appropriate for resolution pursuant to the mediation options.

(a) Early Mediation Process

A complainant who is interested in resolving their complaint through the early mediation process **must indicate their interest at the time they file their complaint, either by checking the appropriate box on the on-line complaint form or indicating their interest in participating in early mediation when they send a copy of their complaint to OCR**. If OCR determines that the complaint is appropriate for resolution through the early mediation process, OCR will contact the complainant and the recipient and offer this resolution process. If the recipient agrees to participate in the early mediation process, OCR will facilitate settlement discussion between the parties. The early mediation process is available only in evaluation.

(b) Mediation During Investigation Process

During the course of OCR's investigation of the complaint, the complainant and recipient may express interest in resolving it through mediation. If OCR determines that mediation is appropriate, OCR will facilitate settlement discussions between the parties.

OCR does not approve, sign or endorse any agreement reached between the parties as a result of the early mediation process or the mediation during investigation process, and OCR does not monitor the agreement. However, if a material breach of the agreement occurs, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or

within 60 days of the date the complainant obtained notice that a material breach occurred, whichever date is later.

APPEALS

NOTE: OCR affords an opportunity to complainants to appeal certain determinations and dismissals <u>if the complaint was filed with OCR prior to July 18, 2022</u>.

Complainants may appeal a determination(s) based on a finding of noncompliance (subsection 303(a)) and dismissals based on subsections 108(c), (d), (f), and subsections 110(a), (b) or (g) of the *Case Processing Manual*. An appeal can be filed electronically, by mail, or fax. The complainant must either submit electronically a completed appeal form or submit a written statement of no more than ten (10) pages (double-spaced, if typed) to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; if submitted by e-mail, to OCR@ed.gov; if submitted by fax, to 202-453-6012. The filing date of an appeal submitted by mail is the date the appeal is postmarked or submitted electronically or by fax.

In the appeal, the complainant must explain why they believe the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal.

An appeal must be submitted within 60 calendar days of the date indicated on the letter of finding or the dismissal. A waiver of the 60-day timeframe may be granted where the complainant was unable to submit the appeal within the 60-day timeframe because of illness or other circumstances, or because of circumstances generated by OCR's action that have adversely affected the complainant's ability to submit the appeal timely.

OCR will forward a copy of the complainant's appeal to the recipient. The recipient has the option to submit to OCR a response to complainant's appeal. Any response to complainant's appeal must be submitted to OCR within 14 calendar days of the date that OCR forwarded a copy of the complainant's appeal to the recipient.

OCR will issue a written decision on the appeal to the parties.

ADDITIONAL INFORMATION

Right to File a Separate Court Action

The complainant may have the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no findings; or
2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the

complainant and will provide additional information about the right to file for injunctive relief.

Prohibition against Intimidation or Retaliation

A recipient under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

Investigatory Use of Personal Information

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records.

The Privacy Act of 1974, 5 U.S.C. § 552a (Privacy Act), Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and the Freedom of Information Act (FOIA), 5 U.S.C. §552, govern the use of personal information that is submitted to all Federal agencies and their individual components, including OCR. The Privacy Act protects individuals from the misuse of personal information held by the Federal government. It applies to records that are maintained by the Federal government and that are retrieved from a system of records by the individual's name, social security number, or other personal identifier. It regulates the collection, maintenance, use and dissemination of personal information in records contained in systems of records of Federal government.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used by OCR only for authorized civil rights compliance and enforcement activities. However, in order to investigate or resolve a complaint, OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such details could include, for example, the name, age, or physical condition of the person who is the alleged subject of discrimination. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. Disclosure will only be made as consistent with the Privacy Act, FERPA, and FOIA.

OCR can release certain information about your complaint to the press or general public, including the name of the recipient; the date your complaint was filed; the type of discrimination included in the complaint; the date the complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include the complainant's name or the name of the person on whose behalf the complaint was filed.

FOIA gives the public the right of access to records of Federal agencies. Individuals may obtain items from many categories of records of the Federal government, not just materials that apply to them personally. OCR must honor requests for records under FOIA, with some exceptions. If records are covered by the Privacy Act, they must be required to be released under FOIA. Generally, OCR is not required to release records during the case evaluation and investigation process or enforcement proceedings, if the release could reasonably be expected to interfere with or affect the ability of OCR to do its job. 5 U.S.C. § 552(b)(7)(A). Also, a federal agency is not required to release records if they are pre-decisional documents that would be subject to certain privileges in litigation. See 5 U.S.C. § 552(b)(5). A Federal agency may refuse a request for records if their release would or could reasonably be expected to result in an unwarranted invasion of

privacy of an individual. 5 U.S.C. § 552(b)(6) and (7)(C). Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.