



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

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Mr. Eric Burke
Superintendent
School District of Rhinelander
665 Coolidge Avenue, Suite B
Rhinelander, WI 54501

Sent via email only to: [redacted content]

OCR Case No. 05-22-1029

Dear Mr. Burke:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding a complaint filed against the Rhinelander School District (District). The complaint alleged the District discriminated against a student (Student A) based on their gender identity when District teachers failed to use Student A's name and pronouns associated with their gender identity in [redacted content], and the District failed to respond appropriately to District students harassing Student A based on their gender identity in [redacted content].

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 prohibits discrimination on the basis of sex in any educational program or activity operated by a recipient of federal financial assistance. As a recipient of federal financial assistance from the Department, the District is subject to Title IX.

During its investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and four District staff members – the Title IX Coordinator, the high school's Associate Principal, and two high school teachers. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). OCR determined that a resolution agreement is appropriate in this case because OCR's investigation has identified concerns that can be addressed through a resolution agreement. A summary of OCR's investigation to date and the resolution agreement follows.

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

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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 under Title IX. The regulation implementing Title IX, at 34 C.F.R. § 106.30(a), defines sexual harassment, in relevant part, as: “conduct on the basis of sex” that includes (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”

A recipient violates Title IX if it excludes a student from participation in, denies a student the benefits of, or otherwise subjects a student to discrimination on the basis of sex under an education program or activity operated by a recipient of federal financial assistance.

In determining whether sex-based harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including whether the conduct was unwelcome to the student, the degree to which the conduct affected one or more students’ education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; and any other incidents at the school. OCR examines the conduct from an objective perspective and a subjective perspective.

The regulation implementing Title IX, at 34 C.F.R. § 106.30(a), also defines supportive measures as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The regulation implementing Title IX, at 34 C.F.R. § 106.44(a), provides that a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. A recipient's response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Further, the Title IX Coordinator must promptly

contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The Title IX regulations also establish procedural requirements for recipients. The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, and to notify all persons identified above of the name or title, office address, email address, and telephone number of the employee(s) designated as the Title IX Coordinator. A recipient must provide to persons entitled to a notification under 34 C.F.R. § 106.8(a) notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

The regulation implementing Title IX, at 34 C.F.R. § 106.81, incorporates by reference the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 (Title VI). The regulation implementing Title IV, at 34 C.F.R. § 106.6(b), requires each recipient to keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part.

Facts

Student A is a [redacted content] student in the District and was in the [redacted content] during the [redacted content] school year. Student A had [redacted content] school year and had notified the District of their changed name and pronouns at that time.

In the [redacted content], Student A participated in District online virtual classes due to [redacted content]. On [redacted content], Student A returned to full-time in-person instruction at the District's [redacted content]. The day before Student A returned to school in-person, the Associate Principal emailed all of Student A's teachers to notify them that Student A would be returning to in-person learning and informed the teachers that Student A uses the pronouns [redacted content] and a different name than the name identified in their official school record.¹

According to the Complainant, within the first two days of Student A's return to school in [redacted content], Student A experienced multiple incidents of sex-based harassment due to their gender identity, including being misgendered by Teacher A as well as student-on-student harassment.

[redacted content]: *Harassment in Teacher A's class, Teacher B's class, and [redacted content]*

¹ The District's Administrative Guide 2266: *Student Gender Support* was adopted by the School Board on September 1, 2021, and states that the District will use identity-affirming names and pronouns, unless otherwise required by law. See <http://go.boarddocs.com/wi/rhine/Board.nsf/goto?open&id=C6MSGP6BCB31> (last visited May 22, 2023)

On [redacted content], Student A was in a [redacted content] class when Teacher A used incorrect pronouns for Student A during class. Teacher A admitted to using the incorrect pronouns and confirmed to OCR that she was aware of Student A's name and pronouns before [redacted content] joined her class that day. Teacher A had received the Associate Principal's email, which informed her of Student A's name and pronouns, and had taught Student A in the [redacted content] school year, during which Student A used the same name and pronouns. Teacher A told OCR that she unintentionally used the wrong pronouns for Student A and that Student A is the [redacted content].

The Complainant told OCR that on that same day, students in Teacher A's class used incorrect pronouns for Student A, laughed at Student A, called Student A [redacted content] asked Student A [redacted content] and told Student A [redacted content] had no friends. Teacher A told OCR that she was aware of "tension" in the classroom but said she did not hear students make these comments.

According to the Complainant, during Teacher B's [redacted content] class later that day, students harassed Student A based on their gender identity by snickering [redacted content] [redacted content] and [redacted content]. Teacher B told OCR that she did not hear students make these comments. Teacher B told OCR that she first learned that students had harassed Student A in her class a few weeks after it occurred when the Associate Principal told her that Student A had been harassed in her class, but did not provide Teacher B with any details about the harassment. After learning about the peer harassment, Teacher B reached out to Student A to let them know that [redacted content] could come to her if there were any issues moving forward. Teacher B did not attempt to obtain any information about the harassment from Student A or other classmates. She told OCR that she did not address it with the class because she did not want to draw attention to Student A.

The Complainant told OCR that also on [redacted content], a student in Student A's [redacted content] class attempted to [redacted content] Student A's [redacted content]. Student A immediately reported this conduct to the [redacted content] teacher (Teacher C). Teacher C reported this incident to the Associate Principal the same day and informed the Associate Principal that the other student denied [redacted content] when he asked her, and that he did not find [redacted content] of [redacted content]. According to the Associate Principal, Teacher C reportedly counseled the student that there are consequences for [redacted content]. The District did not provide documentation that Teacher C reported the incident to an administrator or memorialized the conversation about potential consequences with Student C.

[redacted content]: *Complainant and Teacher A Email Correspondence*

On the morning of [redacted content], the Complainant emailed Teacher A and specifically described the following incidents that had occurred the day before: "a girl in [redacted content] was [redacted content] of [Student A] and then denied it when [Student A] told the teacher," "in [redacted content] kids whispered and giggled the name [redacted content] at [Student A]," and that Teacher A and students in her class had misgendered Student A by using the wrong pronouns and ignored Student A's "requests not to refer to [redacted content]" Teacher A responded by email to the Complainant that morning stating that the class had six students² who had already bonded, so it would take some time for them to accept Student A. Teacher A's

² Teacher A's class was an elective class where students learn skills to prepare them for jobs in the. In this class, [redacted content] they [redacted content].

message further stated that she had “two tough nuts to crack in that class.” Teacher A used incorrect pronouns for Student A throughout the email. The Complainant responded with an email correcting Teacher A for again consistently referring to Student A by the wrong pronouns. During Teacher A’s OCR interview, she stated that she again unintentionally used the wrong pronouns for Student A and expressed remorse.

[redacted content]: Meeting with Teacher A and the Associate Principal

During Teacher A’s class on **[redacted content]**, Student A had **[redacted content]**. After Student A reported the **[redacted content]** to Teacher A, Teacher A and the class **[redacted content]**. Teacher A told OCR she continued **[redacted content]** during her lunch period after the class ended **[redacted content]**.

Teacher A then met with the Associate Principal in the afternoon of **[redacted content]**. Teacher A told OCR that she informed the Associate Principal that Student A’s **[redacted content]** during class and that she suspected two specific students (Student B and Student C) may have **[redacted content]**. The Associate Principal spoke with Student B and Student C, who both denied **[redacted content]**. The Associate Principal told OCR that she did not **[redacted content]**. The Associate Principal said that she kept “personal notes” related to the **[redacted content]** incident, but she did not document the incident in Infinite Campus.³

During this meeting, Teacher A recommended to the Associate Principal that Student A be removed from her class and take the class later with different students. Teacher A expressed to OCR that it might have been difficult for Student A to catch up in the class because Student A **[redacted content]**. Teacher A acknowledged that she was aware of this before Student A enrolled and she thought Student A would be able to catch up because of her experience with Student A during Student A’s **[redacted content]**. According to the Complainant, Teacher A requested that Student A be removed from the class because Teacher A could not keep Student A safe from peer harassment by the other students in the class.

Teacher A also informed the Associate Principal that she had misgendered Student A in class and in an email. The Associate Principal told OCR that she spoke with Teacher A about using the appropriate pronouns and notified the high school’s administrative team that Teacher A had used incorrect pronouns for Student A.

Teacher A did not share the Complainant’s **[redacted content]** email or its contents with any administrators, including the Associate Principal, nor did she inform the Associate Principal or any other administrator about the incidents of harassment that the Complainant described in her email. Teacher A told OCR that during her meeting with the Associate Principal, she only reported what had happened in her classroom that day because “my classroom is my concern.” However, Teacher A and the Associate Principal did not discuss the Complainant’s reports of other students misgendering or harassing Student A based on gender identity, which did occur in Teacher A’s class.

³ Infinite Campus is a student information system used by the District to maintain student records, including disciplinary records and reports of incidents of alleged harassment.

[redacted content]: Meeting with the Complainant, Student A, and the Associate Principal

On the afternoon of **[redacted content]**, the Complainant and Student A met with the Associate Principal. At that time, Student A's schedule was changed so **[redacted content]** would only attend school in-person for three classes and would take three classes independently at home.

According to the Complainant, Student A's schedule was changed so **[redacted content]** could take in-person classes with teachers who were allies, and the Associate Principal could only find three classes in which Student A could feel safe. The Complainant stated that Student A was moved out of Teacher A's class because Teacher A said she could not protect Student A from the other students in the class. The Complainant expressed to OCR that if that was the case, the District should have removed the students who were engaging in the harassment, not Student A.⁴ The Complainant stated that Student A would have preferred to attend school in-person full time.

The Associate Principal's description of the meeting differs from the Complainant's version. According to the Associate Principal, she met with the Complainant and Student A to determine whether returning to school full-time was working for Student A, given that Student A had been attending virtual online classes **[redacted content]**. Although the conversation included a discussion of the incidents described above, Student A requested to attend in-person part-time. The Associate Principal initially told OCR that Student A said **[redacted content]** did not want to return to school in-person full time because **[redacted content]** did not feel safe in school; however, the Associate Principal later told OCR that Student A expressed that **[redacted content]** felt school was "too much" and that the decision was not specifically due to feeling unsafe due to bullying and harassment. Teacher B, however, told OCR that when the Associate Principal contacted her about changing Student A's schedule, the Associate Principal told her that they were looking to move Student A away from particular students, and that after reviewing her class rosters, Teacher B identified a specific class as the best class for Student A to be placed.

Student A attended school part-time following this meeting until **[redacted content]**, when **[redacted content]** returned to school in-person for all of their classes.

[redacted content]: Harassment in the hallway

According to the Complainant, on approximately **[redacted content]**, a male student "bumped" Student A in the hallway and used a derogatory term **[redacted content]** toward them. Student A immediately reported the incident to the School Principal who viewed video footage to determine what had happened, met with the student who admitted to engaging in the conduct, and disciplined the student. Student A voluntarily agreed to participate in a "restorative" meeting facilitated by the School Principal. The District provided written documentation of its response to the report of harassment; however, the misconduct was documented in Infinite Campus as "peer mistreatment" and not as sex-based harassment.

[redacted content]: Substitute Teacher Misgendering

⁴ Teacher A confirmed that Students B and Student C remained in and completed the course from which Student A was removed.

In [redacted content], a substitute teacher in Teacher B's class used the wrong name and pronouns for Student A during class.⁵ The substitute teacher told Teacher B that she had misgendered Student A, after which Student A asked to use the restroom and did not return to class. Teacher B talked to Student A about the substitute teacher misgendering of them and apologized that it occurred; Teacher B did not report the substitute teacher's actions to anyone.

Supportive Services for Student A

The Associate Principal told OCR that she provided supportive services to Student A by continuing to check in with Student A and working with Student A and the Complainant to change Student A's schedule to a schedule that [redacted content] "felt comfortable with." Additionally, the Associate Principal reported to OCR that Student A has a school counselor and access to a school psychologist.⁶ The District did not suggest or provide any documentation indicating that Student A was offered or encouraged to utilize these District services. The Complainant told OCR that Student A is unaware of any supportive services that were offered to Student A, except that Student A knows [redacted content] can go to the Associate Principal's office at any time.

District Policies and Procedures

The District's published policies prohibit discrimination based on sex, including gender identity.⁷ The District has adopted policies that include detailed procedures for investigating and resolving harassment complaints based on such discrimination, which include interviews of relevant individuals, review of documentary evidence, written investigative reports with recommended findings, issuance of a final determination, and an appeals process.

The Title IX Coordinator confirmed to OCR that District policy requires District staff to report any incidents of harassment that they become aware of, either by directly witnessing or someone reporting to them, to a building administrator. Reporting harassment in violation of District policy is not discretionary. Reports of potential harassment are to be documented, either by the person reporting the incident or by the administrator who receives the report.

According to the Associate Principal, the District policies delineate how the District is to respond to formal complaints of conduct prohibited by the policies, and District administrators try to incorporate the same process into how they handle informal reports or complaints. The Title IX Coordinator said that harassment checklists⁸, along with the District's written policies, should be used by District administrators and principals in response to any reported conduct that could constitute harassment in violation of District policies. The Associate Principal told OCR that

⁵ The Associate Principal indicated that the Infinite Campus recordkeeping system can create problems with substitute teachers using the wrong name and pronouns because Infinite Campus shows the legal name of the student, and that the name a student uses is recorded as a "nickname."

⁶ The Associate Principal was aware that Student A [redacted content]. The Title IX Coordinator told OCR that the school does not have mental health counselors (other than the school psychologist).

⁷ See District Policy 2260: Nondiscrimination and Access to Equal Educational Opportunity, District Policy 2266: Nondiscrimination on the Basis of Sex in Education Programs or Activities, and District Policy 5517: Student Anti-harassment, available at <https://go.boarddocs.com/wi/rhine/Board.nsf/Public?open&id=policies#>.

⁸ The District provided OCR a copy of the harassment checklists: documents titled "Checklist: Processing a report of harassment" and "Checklist: Investigating and resolving a complaint of harassment."

school administrators are to report harassment to the District-level within two days after receiving the report and investigating the incident. The Associate Principal additionally indicated that the facts underlying incidents of alleged harassment are to be entered into Infinite Campus, and the report is to be flagged as harassment. The Associate Principal told OCR that staff are to report all incidents of sex-based harassment, but staff does not always recognize conduct that constitutes sex-based harassment when it occurs.

District Response to Reported Harassment of Student A

The Title IX Coordinator⁹ told OCR that all the incidents in the Complainant's **[redacted content]** email and the conduct described in the OCR complaint would be considered potential prohibited harassment under the District's Anti-Harassment Policy.¹⁰ However, the information provided does not reflect that the District followed District policies and procedures or kept records of actions the District took in response to the reports of sex-based harassment of Student A. The only incident for which the District provided documentation of the report and responsive action was the **[redacted content]** incident in which Student A was bumped and called a derogatory name in the hallway. However, District staff did not complete harassment checklists for the **[redacted content]** incident.

The Title IX Coordinator told OCR that she did not become aware of any of the incidents described above until after she received the OCR complaint. The Title IX Coordinator remained unaware of some of the incidents at the time of her OCR interview. Specifically, she was aware that Teacher A had misgendered Student A, but not of the alleged peer harassment in Teacher A or Teacher B's classes.

Training on Policies and Procedures

The District provides annual training to its staff using a Title IX training module through Vector training. However, this training module does not train staff on the District's specific policies and procedures for responding to incidents of sex-based harassment. The Associate Principal expressed concern that the District training does not explain the types of conduct that would constitute harassment prohibited by the District's policies and that some staff do not recognize actions that constitute prohibited sex-based harassment.

When OCR asked what type of conduct is prohibited by the District's nondiscrimination policies, one teacher interviewed could not identify any type of prohibited conduct beyond stating that staff are not supposed to discriminate against students. Another teacher told OCR that if she observes bullying or harassment of a student in her classroom, she would express her disapproval to the person doing the bullying, tell them bullying is not tolerated, and keep an eye on the situation. This teacher told OCR that she would probably check in with the student who experienced the bullying, but she would not report the conduct to an administrator because she has been trained to handle disciplinary issues in the classroom. The teacher denied having an

⁹ At the time OCR initiated its investigation, the District did not prominently display the Title IX Coordinator's contact information on its website or in its publications as required by the Title IX implementing regulation, at 34 C.F.R. § 106.8(b)(2). During the course of the investigation the District revised its website to include the names, titles, office address, email address, and telephone numbers for the employees designated and the District's Title IX Coordinators. See [School District of Rhinelander - Title IX](#) (last visited May 22, 2023).

¹⁰ District Policy 5517: Student Anti-harassment, available at <https://go.boarddocs.com/wi/rhine/Board.nsf/Public?open&id=policies#>.

obligation to report any behavior or incidents to an administrator, except for abuse under her obligation as a mandated reporter.

Conclusion and Resolution Agreement

OCR determined that it is appropriate to resolve the complaint allegations in accordance with Section 302 of the CPM because OCR has identified concerns that can be addressed through a resolution agreement.

Based on the information gathered in OCR's investigation thus far, OCR has concerns that the District is not adequately documenting or tracking incidents of sex-based harassment that could create a hostile learning environment for its students. The investigation to date also suggests that although the District has policies and procedures in place to respond to incidents and reports of sex-based harassment including how to file formal complaints, the District has not provided effective training on the District's policies and procedures or its obligation to respond to reports of sex-based harassment, including harassment based on gender identity, in compliance with Title IX. As a result, OCR has concerns that District staff are not investigating, responding to and documenting reports of sex-based harassment, in a prompt manner that is not deliberately indifferent in response to notice of sex-based harassment.

Both the Complainant and Student A reported incidents of Student A being misgendered and experiencing sex-based harassment. The District did not provide evidence that these reports were documented, the Title IX Coordinator was unaware of reports of sex-based harassment of Student A until after the District received notice of the present OCR complaint, and was therefore unable to coordinate a response consistent with Title IX. Additionally, OCR has concerns that the District's response to these reports of sex-based harassment were inconsistent with Title IX's requirement that the District respond in a prompt manner that is not deliberately indifferent to notice of sex-based harassment. These concerns about the District's responsive action include the District's decision to change Student A's schedule [redacted content]. This schedule limited Student A's ability to participate in the District's education program or activity. Although the District asserts that the schedule change was agreed upon by the Complainant and Student A, OCR has concerns that Student A agreed to the new schedule because Student A did not feel the District had taken sufficient steps to end the harassment and prevent its recurrence. In addition, OCR is concerned that the District response to discriminatory harassment was to burden the harassed student.

Finally, OCR has concerns that at the time of the investigation, the District did not prominently display the contact information for its Title IX Coordinator or its website or its publications as required by Title IX.¹¹

When fully implemented, the resolution agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the agreement until the recipient is in compliance with the terms of the agreement and the statute(s) and regulations(s) at issue in the case.

This concludes OCR's resolution activities regarding the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues

¹¹ The District's website currently includes the Title IX Coordinator's contact information.

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 District 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 individual may file another complaint alleging such treatment.

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 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.

The Complainant may have a right to file a private suit in Federal court whether or not OCR finds a violation.

OCR looks forward to working with the District during the monitoring of the Resolution Agreement. If you have any questions about this letter, you may contact Ms. Samia Malik, attorney, at (312) 730-1594 or Samia.Malik@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader