



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

September 7, 2017

VIA EMAIL: bella\_wong@lsrhs.net

Re: Complaint No. 01-14-1155

Dear Superintendent Bella Wong:

The U.S. Department of Education's Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed against Lincoln-Sudbury Regional High School (School). The Complainants alleged that the School discriminated against the Student by failing to respond promptly and appropriately when the Student reported to the School on November 7, 2013, that two students had sexually assaulted her days earlier. As explained below, OCR found insufficient evidence to support the Complainants' allegation.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, at 34 C.F.R. Part 106 (Title IX). Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance, the District is subject to Title IX. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the information available, OCR investigated the following legal issue:

Whether the School failed to promptly and equitably respond to notice of a sexual assault, in violation of 34 C.F.R. Section 106.8(b).

OCR reviewed extensive information provided by both the School and Complainants. Information included student records, investigative documents, and correspondence with the relevant parties and School staff. OCR also interviewed the two housemasters who investigated the complaint, the Director of Student Services, and the Complainants. Although OCR did not investigate any Section 504 and Title II allegations, we do discuss the obligations of Section 504 and Title II as they relate to steps the School took in its Title IX investigation.

### **Background Information**

The School is divided into four houses. Each house is run by a housemaster. Among the many administrative responsibilities the housemasters hold is the responsibility to enforce the student code of conduct, which includes prohibitions on sexual harassment. Housemasters investigate and hold hearings pertaining to any violation of the student code of conduct.

Students in different houses have limited interaction with one another in school. One of the accused students (Respondent 1) was in Housemaster 1's house (House) with the Student. The other accused student (Respondent 2) was in Housemaster 2's house.

At the time of the incident, the Student was in tenth grade at the School and on an IEP [REDACTED]

**Factual Findings**

On Thursday, November 7, 2013, the Student reported to the School clinical counselor that on November 1, while attending the School football game, Respondents 1 and 2 sexually assaulted her under the bleachers during a game of truth or dare. The respondents exchanged texts with the Student following the incident. OCR reviewed the transcript of the counselor's conversation with the Student and found that the counselor indicated she was available to support the Student but that she needed to report the incident to the authorities, administration, and her parents. Immediately, the counselor brought in the Student's mother (who is a teacher at the school) and Housemaster 1. Subsequently, the police were informed of the incident. Additionally, Housemaster 1 consulted with the Director of Student Services who was brought in because the mother was a teacher at the school and because the School's Title IX coordinator was newly appointed. The Director had previous experience serving in a similar role as the Section 504 coordinator and served as Title IX coordinator for the incident.

The police requested that the School wait to begin its own investigation until the police could gather its facts. The Complainants told OCR that the School did not act or check in on the Student after the initial reporting until the School's official investigation began. However, OCR found that although the investigation did not begin immediately, the School did take steps right away to support the Student and to ensure she did not have contact with the respondents.

On Monday, November 11, 2013, a federal holiday, Housemaster 1 emailed the Complainants to check in on the Student, see if the respondents had contacted her, and find out whether the Student felt comfortable returning to school the following day. Housemaster 1 told the Complainants that they could call her at home that evening. The following day, the Complainants responded via email that the Student was not doing well and the respondents would receive harassment prevention orders (HPO) that day. The email sent by the Complainants notes that there were more texts between the Student and respondents after the incident than the Student originally shared with Housemaster 1.

The Student did not attend school November 12, 2013. The same day, the respondents were served with HPOs, and the housemasters asked both respondents to stay home the next day. The housemasters told OCR that the HPOs applied in school and if the respondents saw the Student, they were told to turn around and go in the other direction. The housemasters also informed OCR that they immediately reviewed the Student's and respondents' schedules to determine if they shared any classes or lunch together, and determined that the Student did not share any classes with the respondents. The Complainants asserted that the Student shared a study skills class with Respondent 2. In interviews with OCR, Housemaster 2 explained that although they

had study skills during the same block, [REDACTED] [REDACTED] [REDACTED], and the Complainants clarified that the Student was in the liaison's office while Respondent 2 was in a classroom across from the office. Although the Student and Respondent 1 shared the same lunch block, the Student told Housemaster 1 that she did not eat lunch in the cafeteria. OCR asked Housemaster 1 if the Student did not eat in the cafeteria because of the incident. Housemaster 1 told OCR she asked the Student about this and found that she did not eat regularly in the cafeteria for reasons unrelated to the incident. Housemaster 1 explained the School is an open school, and students can dine wherever they want. Additionally, Housemaster 1 said that the Student would often have lunch in her mother's classroom. The Complainants told OCR that the Student always ate in the cafeteria prior to the incident. On one instance, the Student informed Housemaster 1 that she did cross paths with Respondent 2 in the hallway on November 14, one of the seven school days in November where the Student's attendance overlapped with at least one of the respondent's according to attendance records. Housemaster 1 asked the Student what classes she would be attending to ensure they would not cross paths again, and asked if there was anything else the School could do to support her.

In addition to its efforts to ensure the Student would not have contact with the respondents pending the outcome of the investigation, OCR found the School immediately took actions to support the Student emotionally and academically. As a result of the incident, the Student was having difficulty attending school and focusing in class. On November 13, 2013, the Student's special education liaison emailed the Student's teachers informing them that the Student "was involved in an incident recently that has led to absences and some missed assignments. While she has returned to school, she may not be fully 'present' and engaged in classwork." The liaison asked her teachers to provide progress notes and to identify priorities for work completion. On November 15, Housemaster 1 emailed the teachers to state that the Student was to have extensions on all assignments through the following week and that if the Student was unable to be in class, she could meet with the special education liaison in the Learning Center or counselors in the Clinical Suite. When the Student expressed discomfort with a student who sat next to her in one class, the clinical counselor asked the teacher in an email on November 15 to change all the seats in the class so the Student did not feel singled out. The Complainants shared with OCR that when the Student returned to school on November 13, she generally spent her time in the Learning Center or in the main room of her House, rather than attending classes. By November 22, the School had set up a schedule for teachers to meet with the Student one-on-one in the House conference room to go over making up work and lessons. Additionally, the School offered counseling services to both the Student and her family.

The Complainants told OCR that other than offering the House main room for the Student to sit in as an alternative to attending class, the School did nothing to support her or provide her with any academic support. They told OCR the Student sat in the House main room listening to an iPod and had to see Respondent 1, who went to the space to access a school mailbox. As explained above, however, OCR did not find a lack of support on the part of the School. A November 15, 2013 email from the liaison stated that the Student is welcome in the Learning Center, the Clinical Suite, or the House, although it did not specify the main room or conference room. Housemaster 1 told OCR that the Student "knew the [House] conference room was her safe space." According to November 22, 2013 IEP team meeting notes shared by the Complainants, the Complainants stated at the meeting that they did not feel the House, which the Complainants clarified for OCR meant the House main room, was a "safe place." According to a

guidance counselor email from the same date, the team agreed that the Student would spend November 25, 26, and 27 in the House conference room. The School told OCR that there was possibly one time when, for approximately 30 minutes, the Student was in the main room because of a meeting in the conference room. However, OCR found no evidence that the Student was placed in the main room where she was likely to encounter Respondent 1. Contemporaneous emails also indicated Housemaster 1 and others checked in with the Student and the Complainants.

Further, at the November 22, 2013 IEP team meeting, the team determined the Student required additional supports. The team noted that the Student reported “not being able to focus and not feeling safe in the building regardless if the other individuals [were] in sight.” The team determined that as a result of the incident, the Student needed an extended evaluation outside of the School in a therapeutic environment. The Complainants told OCR that the Student was forced out of the School and “punished academically” by being placed in a less academically rigorous school. The Complainants told OCR that the School prohibited the Student’s liaison from attending the team meeting because the School knew the liaison had the Student’s best interest in mind and the School was fearful she would prevent the placement. However, OCR found that the liaison had attended the November 22 team meeting, as evidenced by the signed attendance sheet from the meeting. OCR also reviewed emails indicating that the liaison was a key person in setting up the IEP team meeting.

In general, OCR refrains from assessing the appropriateness of substantive, educational decisions made by an IEP team. In this case, it appeared to OCR that the School obtained and considered appropriate information, and the needs of the Student, when it made the decision to refer the Student for an extended evaluation. While the Student was placed in a less academically rigorous school, the School believed it was an appropriate placement to address her emotional and psychological needs, which were affecting her ability to focus academically. Further, the original referral notice to the outside placement notes that the goal was to determine what supports the Student needed, in hopes of her returning to the School by the beginning of the second semester and the subsequent materials prepared by the IEP team for her continued placement at the outside school also note the team’s hope that the Student could graduate with her class. OCR found no evidence that the decision of the IEP team constituted an attempt to punish the Student for the incident or reporting the incident.

Regarding the School’s investigation, on November 20, 2013, the police informed the School that it could move forward in its investigation. Immediately the housemasters sought to collect relevant text messages from the Student and to set up a time to speak with the respondents. Both respondents had obtained legal representation. Respondent 1 provided a statement through his attorney and copies of a Facebook message between him and the witness identified by the Student after the event. Respondent 2 would not cooperate with the investigation. Housemaster 2 informed his parents that Respondent 2 had the right to due process, but absent an interview, she must act on text messages and other available evidence.

Housemaster 2 interviewed the witness who had been on Facetime with the Student during the incident. The witness indicated she was not able to see the incident but was able to overhear the events. The witness was also involved in a Facebook exchange with Respondent 2 after the incident. When Housemaster 2 noticed a discrepancy between the Facebook messages and the initial interview, Housemaster 2 interviewed the witness again. Additionally, Respondent 1 was



classmates were looking at her, the Director reported that the attending adults did not see the respondents or witness any harassment or retaliation. The Complainants told OCR that there was adult accompaniment only during the second visit. The only specific example of harassment during these two visits they provided was the respondents' friends "snickering" at the Student and a teacher calling on the Student in class when Housemaster 1 was supposed to have informed the teachers not to call on the Student.

The Student's IEP team reconvened on January 17, 2014, for a mid-evaluation update and again on February 10, 2014, and determined that based on the evaluation results, the Student still required a therapeutic placement. The Complainants again expressed concern that the Student was being punished academically for the incident. However, the team determined that as she was suffering from depression, anxiety, and PTSD, the therapeutic component of the placement was more important than the academic rigor of the program. The team stated:

While [the Student] possesses many cognitive, academic, and athletic strengths, her emotional disability...affect[s] her ability to concentrate, participate in classroom discussions/presentations and produce her best quality work in on-demand situations. In addition, [the Student] is not comfortable in larger groups and less unstructured settings.

The IEP team suggested that the following year it would be open to integrating the Student into the general education program if she was ready. The Complainants requested that the School pay for an outside private placement. The team did not feel that the outside private schools identified by the Complainants provided the appropriate services for the Student and, as noted, OCR generally refrains from assessing the appropriateness of substantive educational decisions made by a team of knowledgeable people following the procedural requirements of Section 504. The Complainants told OCR that the team was not comprised of the most knowledgeable people because, once again, the liaison was not invited to attend. However, the signed attendance sheets indicated that the liaison attended the November 22, 2013 and February 10, 2014 team meetings, when the team made the decisions regarding the outside evaluation and outside placement. When OCR asked the Complainants about the liaison's attendance, they explained that she was excluded from the January 17 meeting and attended the February 10 meeting only after they fought for her to attend.

### **Legal Standard and Analysis**

Title IX and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment is unwelcome conduct of a sexual nature and 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, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently severe, persistent, or pervasive to interfere with or limit a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of

sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.

Under Title IX and the regulations, once a school has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. The school is not responsible for the actions of the harassing student, but rather for its own discrimination should it fail to respond adequately. A school may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the school knew or reasonably should have known about the harassment; and (3) the school fails to take appropriate responsive action. These steps are the school's responsibility whether the student who was harassed makes a complaint or otherwise asks the school to take action.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the school must conduct a prompt, thorough, reliable, and impartial inquiry. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The school must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to address sexual harassment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student reports of harassment. The school also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

OCR found insufficient evidence that the School failed to promptly and equitably respond to the Complainants' allegations. Upon notice of the incident, the School counselor immediately reported the incident to the appropriate authorities. The School did briefly delay its investigation at the request of the police but understood its responsibility to conduct an investigation independent of the police investigation, immediately began providing interim remedies for the Student, and resumed its investigation eight school days after it received notice of the incident. With regard to its investigation, the School gathered all available information, including thoroughly interviewing possible witnesses, in spite of uncooperative respondents. The School also made a determination based on the preponderance of the evidence that the sexual misconduct did occur. During the discipline process, [REDACTED]. [REDACTED] [REDACTED] Further, the School kept in mind larger community concerns by placing limitations on the respondents even though the Student no longer attended the School.

While the School provided timely written notice of the investigation to the respondents, it did not provide concurrent *written* notice to the Complainants. Rather, the School kept the Complainants

updated on the steps of the investigation and ensured them that the Student would not encounter the respondents in her programming. OCR found no indication that by not providing formal written notice, the School failed to eliminate the hostile environment for the Student.

During the course of the investigation and at OCR's request, the School issued written notice to the respondents and Complainants on October 1, 2015. However, these notices inaccurately stated that the School's investigation was inconclusive. Again at OCR's request, the School rescinded the incorrect notices and provided corrected written notice to the Complainants dated August 24, 2017.<sup>1</sup>

### **Conclusion**

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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 Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the School 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 thank you for your patience and apologize for the delay in the processing of this complaint. If you have any questions, please contact attorney Sandy Lin at (617) 289-0095 or [sandy.lin@ed.gov](mailto:sandy.lin@ed.gov).

Sincerely,



Meena Morey Chandra *w/p AMM*  
Acting Regional Director

cc: Felicia Vasudevan

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<sup>1</sup> The School's delay in rescinding the incorrect notices and providing the Complainants with corrected written notice was at OCR's request pending the conclusion of OCR's investigation.