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March 13, 2014

To: OSPI - Administrative Resource Services

From: [REDACTED] and [REDACTED]

Re: Appeal of Seattle School District decision re sexual assault on
[REDACTED]

On January 23, 2014, Seattle Public Schools Superintendent Jose Banda responded to our complaint of March 18, 2013, in which we requested a full explanation of why our daughter was allowed to be sexually assaulted on a chaperoned overnight field trip. Instead of addressing our full complaint, including the chaperone negligence that permitted an assault, Superintendent Banda wrote that the District was unable to determine whether our daughter was a “victim of harassment.” We appealed the District’s decision to the Seattle School Board of Directors on February 4, 2014. On March 6, 2014 the School Board wrote us upholding Superintendent Banda’s decision.

We disagree with the Board’s decision for reasons discussed in detail below, and are therefore submitting this appeal to OSPI.

We understand that it is OSPI’s role to oversee school district compliance with state and federal nondiscrimination and civil rights laws and policies. In our case, the Seattle School District failed to comply with guidelines under Title IX of the US Education Amendments of 1972 (“Title IX”) that are designed to ensure an educational environment free from sexual harassment/retaliation and provide for a prompt and equitable investigation when a sexual assault occurs. The District’s failure to perform a prompt and equitable investigation undermined its ability to gather facts and address the sexual assault. This failure also compromised daughter’s high school education and devastated our family.

The enclosed CD contains the supporting documents we previously sent the District.

Sincerely,

[REDACTED]

[REDACTED]

Discussion

In our March 18, 2013 complaint we demanded a complete explanation of why our daughter was allowed to be sexually assaulted on a chaperoned Seattle Public Schools field trip to NatureBridge on the Olympic Peninsula. The District has redefined our March 18, 2013 complaint into a single issue: whether it can determine if our daughter was a victim of sexual harassment.¹ By redefining our complaint, the District intends to escape responsibility for the lax chaperoning and inadequate adult supervision that created the conditions for the sexual assault on our daughter to occur. The District has not also explained why it is noncompliant with mandatory Title IX directives regarding investigations of sexual assault and harassment.

1. Untimely response to our complaint

After the District failed to respond to our email concerns in the weeks and months following the assault, we escalated our complaint to the Superintendent on March 18, 2013. The District did not respond to our March 18, 2013 complaint in a timely manner. We received Superintendent Banda's reply on January 23, 2014, more than 10 months later. According to the District our complaint is governed by Washington Administrative Code (WAC) 392-190-065, which states:

“The district superintendent must respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days following receipt of such complaint by the school district, unless otherwise agreed to by the complainant.”

Summary: We ask OSPI to find that the District is in noncompliance with this complaint procedure. We request OSPI to direct the School District to give a full explanation of why it failed to abide by this procedure when responding to our March 18, 2013 complaint.

2. Untimely investigation of a reported sexual assault

School personnel were aware of the sexual assault on our daughter the morning after it occurred on November 7, 2012. On April 16, 2013, District General Counsel Ron English wrote us that:

“The parents, the Park Ranger, local police and FBI were all notified, as well as the principal, who notified the executive director of schools and SPS security.”

The District's Title IX compliance coordinator took no action and the District did not instigate an independent investigation of the assault until May, 2013, six months after it occurred, and then only upon our insistence.

On numerous occasions we informed the District of the relevant US Department of Education Office for Civil Rights (OCR) directives, which state:

¹ The District defines sexual harassment according to WAC 392-190-056(1) as “unwelcome conduct or communication that is sexual in nature.”

“Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school’s grievance procedures or otherwise requests action on the student’s behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.”²

Our daughter reported the sexual assault the day it occurred and the District was aware of it the same day. It only commenced its investigation six months later and presented its determination on January 24, 2014, 14 months after the assault. This does not constitute a prompt response. Our daughter’s education was derailed because of this.

The District contends that our complaint regarding noncompliance with OCR directives is outside the scope of its review. It instructed the School Board to ignore this element of our complaint. We disagree.

First, the District is a recipient of federal funds and therefore OCR directives govern the District’s response to all reports of sexual harassment/assault, including our case. As OSPI monitors compliance with state and federal antidiscrimination laws, including sexual harassment, it is appropriate for OSPI to review whether the District acted in accordance with OCR guidelines in this instance.

Second, by not abiding by OCR directives for a prompt and equitable investigation, the District has compromised its own ability to gather timely information about the sexual harassment/violence. Because the District’s investigation commenced six months after the assault, the value of information it garnered from belated interviews of students, teachers, and chaperones is problematic. For example, we pointed out that the account that assailant gave to the District’s investigator had substantially changed from what he told the National Park Service investigators immediately following the assault.

Moreover, the District claims it was hampered in making its determination of sexual harassment/violence by the fact that it could not interview our daughter. But the District had the opportunity to interview our daughter in the months prior to her enrolling in the residential treatment program on February 24, 2013. In fact, our daughter voluntarily gave interviews to National Park Service (NPS) and FBI investigators in November, 2012, and January, 2013. Had the District conducted its investigation in a timely manner, it could have interviewed our daughter before she entered residential treatment.

The District’s investigator, Mr. Kaiser, produced a draft report dated June 28, 2013. Unfortunately Mr. Kaiser did not accept our May 7, 2013 offer to participate, which would have assisted in obtaining a far more complete understanding of the facts. We informed the district that we found its investigation to be wanting in its lack of basic information. Only upon completion of the investigation did Mr. Kaiser invite us to submit material, which we did in great detail on October 18, 2013. Our submission included our daughter’s statement, law enforcement and medical reports, verification of her WA State crime victim’s status, information concerning chaperone negligence from our public records search, screenshots demonstrating retaliation, and detailed commentary on the errors and omissions in the

² Dear Colleague Letter, April 2011

draft report. Moreover, instead of responding to the materials we provided in October, the district waited until January 23, 2014 to find fault with the documents we provided. This illustrates how the District was not invested in conducting a prompt, substantive, and equitable investigation. Finally, we never saw a final report from Mr. Kaiser containing his findings and conclusions because the District terminated his investigation without allowing Mr. Kaiser to incorporate our materials in a final report.

OCR guidelines regarding prompt and equitable investigation are in place to ensure that when a child reports a sexual assault, her education is not derailed as our daughter's was. They are relevant to our complaint and cannot be arbitrarily sidestepped. *Nor can the District claim that OCR Title IX guidelines are out of scope when its investigation and determination of sexual harassment was itself affected by its failure to abide by those very guidelines.*

We find it unconscionable that our daughter's reported sexual assault merited such casual attention from the District that it took no investigative action until we insisted on it. To further mitigate its responsibility, the District blames us, the victim's family, for its own failure to investigate and resolve this matter promptly and equitably.

Summary. We ask OSPI to find that the District is in noncompliance with WAC 392-190-065 and OCR directives (as outlined in the OCR "Dear Colleague Letter") with respect to conducting a prompt investigation of the sexual assault of our daughter. OSPI should also find that the report of sexual assault on November 7, 2012 should have triggered the District's compliance with Title IX guidelines. We request OSPI to direct the School District to give a complete explanation of why it failed to conduct a prompt investigation, why it refused our offer of participation, why it failed to address our October 18, 2013 questions and devalued the materials we submitted, and why it terminated its own independent investigation. We further request a complete explanation of why the district's Title IX officer, Paul Apostle, failed to serve us. We also request an explanation of the district's failure to promptly inform our daughter that the assailant was emergency excluded so she could have returned school and why the District failed to prevent the retaliation that occurred after reporting the assault. We also request OSPI to direct the School District to institute measures that address its failures in investigating the sexual assault on our daughter and explain how these measures address those failings. Finally, we request OSPI institute an enforcement mechanism to ensure that Seattle Public Schools complies with federal and state requirements for prompt and equitable investigation of sexual harassment.

3. Non-response to our complaint that negligent chaperoning and adult supervision created an unsafe environment in which sexual harassment could and did occur

The District is obligated by federal and state law to protect its students against sexual harassment, including sexual violence, including on school-sponsored field trips. It is central to our complaint that on the November 2012 field trip, lax chaperoning and inadequate adult supervision created an uncontrolled and unsafe environment in which sexual harassment could and did occur. We have documented this facet of our complaint in great detail in our October 18, 2013 correspondence with the District. In brief, this evidence shows that field trip environment was conducive to sexual harassment/violence because:

- Male and female students co-mingled before and after curfew without supervision, in violation of the NatureBridge code of conduct, which the Garfield HS teachers and chaperones were required to enforce. This code of conduct forbids students from entering the cabin of the opposite sex, yet teachers permitted male and female students to enter each other's cabins unsupervised before and after curfew.
- Female students left their cabin after curfew, using chairs beneath windows in some cases, and spent the night in a room in the boys' cabin. A boy was found hiding under a bed in the girls' cabin. Students reported texting to meet up after lights out. Chaperones did not prevent students from meeting up after curfew.
- Unscreened/unauthorized chaperones admit they could not control students' comings and goings after curfew the first night but made no effort to rectify the situation the following evening, when the assault occurred, or enforce rules by administering consequences.
- Mr. Ward, the unscreened/unauthorized chaperone in charge of the male students, wore earplugs while he slept, diminishing his ability to effectively monitor of the post-curfew comings and goings of the 14 male students in his charge.
- The Garfield HS teachers slept with their small children in separate cabins which are at least 100 yards from the students' cabins and out of line-of-sight in the dark, and from which the teachers could not see or hear the students they were responsible for.
- Teachers and chaperones had not read the district's field trip procedures and were therefore not aware of their responsibilities therein.
- At least two of the chaperones had not read and signed the SPS Guidelines for Volunteer Field Trip Chaperones, and were therefore not aware of their responsibilities therein.
- Teachers and Garfield HS administrators did not comply with the District's own field trip policies.
- The school knew or should have known that because the assailant had a discipline record that included "lewd conduct" at school (having sexual intercourse on school property during the school day), he presented a risk of sexual harassment and lewd conduct in an under-supervised setting.

The District never answered this aspect of our complaint nor explained the inadequate adult supervision that created the unsafe environment allowing sexual harassment to occur. By denying that sexual harassment/violence occurred on the November 2012 field trip the District wishes to exculpate itself from failing in its responsibilities to provide an environment that was safe from sexual harassment in the first place.³ Had the chaperones performed their duties, students would not have been allowed to comeingle against all the rules, and our daughter would not have been raped. To further exonerate itself, the district devised an ad hoc policy stating that sexual intercourse could occur on fieldtrips in the

³ Memorandum to the School Board from Pegi McEvoy dated January 21, 2014: "The parents have also expressed concerns about the quality of the chaperoning during this field trip. However, because we are unable to conclude whether their daughter was assaulted, there is no basis to conclude that any action or inaction by the chaperones was connected to the alleged sexual harassment."

context of appropriate chaperoning.⁴ How could any circumstance justify sexual activity, sexual harassment, or sexual assault on a field trip? The Seattle Public Schools Code of Prohibited Behaviors applies equally to school and field trip sites.

In its appeal decision, the School Board informs us that last summer the District “reviewed its chaperoning practices for overnight field trips” and instituted revised procedures. This fails to address our complaint for these reasons:

- There is no explanation of why the chaperoning and adult supervision on the November 2012 field trip in question was so inadequate that it permitted sexual harassment/violence to occur.
- There is no explanation of how the changed procedures address the issues we raised regarding the adequacy of adult supervision on field trips and how these changes would prevent a reoccurrence of the events on the November 2012 field trip.
- There is no explanation of why the District’s believes its changed procedures will prove efficacious in preventing sexual harassment on field trips when the chaperones, teachers, and administrators did not abide by the District’s procedures that were in place at the time of the November 2012 field trip.

The District further tells us that it plans to handle our complaint of negligent chaperoning and lax adult supervision as internal personnel matters. This does not address our complaint for these reasons:

- There is no explanation why the staff responsible for managing and supervising the field trip in question created an unsafe and uncontrolled environment allowing a sexual assault to occur. Because the results of an internal review will not be shared with the victim and her family, the review fails to provide an explanation for the circumstances that led to the assault, the focus of our March 18, 2013 complaint.
- It does not explain why any disciplinary action against individual staff would address the issues we raised regarding the adequacy of adult supervision on field trips and how these changes would prevent a reoccurrence of the events on the November 2012 field trip.
- There is no explanation of why the District’s believes any personnel action against individual chaperones, teachers, and administrators will prove effective in preventing sexual harassment on other overnight field trips.
- There is no explanation of why an internal review will address the fallout from the District’s policy that sexual activity can occur on field trips when chaperones are performing their duties, as articulated by District’s spokesperson, Ron English.

⁴ Email from General Counsel Ron English dated May 14, 2013 "We also do not agree with your assertion that if sex occurred this proves the chaperones somehow failed to perform their duties. That depends on the specific circumstances." Email from Ron English dated May 20, 2013: "In your email to me of May 17, you asked several questions about the roles of chaperones and whether sexual intercourse could occur if the chaperones were performing their duties. I reiterate my statement of May 14: it depends on the circumstances."

Summary. We ask OSPI to direct the District to fully answer all points of our complaint regarding chaperone violations of district policy and the inadequate adult supervision on the November 2012 field trip. We request OSPI to direct the School District to explain what measures it will take to address these inadequacies and how such measures would prevent a reoccurrence of the events on the November 2012 field trip. We ask OSPI to direct the District to explain why the new measures would be any better than the old ones had they been enforced. We ask OSPI to require the District to explain why, according to Ron English, sex may occur on fieldtrips under “specific circumstances” (emails of May 14 and 20, 2013) when such activity may or may not be consensual, when such activity is determined consensual or not by the District, and when such activity may lead to emotional trauma, pregnancy, and disease. We ask OSPI to direct the district to explain how it will inform parents of field trip risks so they may make informed decisions concerning their child’s participation.

4. Inequitably reviewed evidence to conclude that sexual harassment of our daughter had not occurred

In its memoranda to the School Board, the District devalued, discounted, and ignored objective information that we have supplied demonstrating that our daughter did not welcome the sexual conduct of the assailant and was immediately thereafter treated by medical professionals for sexual assault and the ensuing PTSD. Instead, the District’s legal team adopted an advocacy role for the assailant and challenged the facts we submitted while not making an equally critical evaluation of the information it says supports the perpetrator’s story.

Both the account provided by our daughter, and the perpetrator’s own account given to the NPS investigators after the assault, state that our daughter clearly told the perpetrator to stop the sexual conduct multiple times. The perpetrator acknowledged that our daughter used a code word to tell him to stop, but he continued sexually touching her in increasingly more invasive and aggressive ways. But the District concludes this does not mean the sexual contact was unwelcome by our daughter because:

“The male student admits that she [our daughter] used a code ‘safe’ word more than once, telling him to stop the sexual touching, but he believed he then persuaded her to allow him to continue.”⁵

Our daughter told the perpetrator to stop more than once, making it clear that his conduct was unwelcome, as defined by OCR:

“Conduct is considered unwelcome if the student did not request or invite it and considered the conduct to be undesirable or offensive. The age of the student, the nature of the conduct, and other relevant factors affect whether a student was capable of welcoming the sexual conduct. A student’s submission to the conduct or failure to complain does not always mean that the conduct was welcome.

⁵ Memorandum to the School Board from John Cerqui dated February 20, 2014.

⁶ OCR, Sexual Harassment: It’s Not Academic, 2008

“Example 1: A middle school student makes offensive sexual jokes to another student, but the student does not object to the jokes or speak out against them. The student’s failure to object does not mean that he or she has welcomed the comments.

“Example 2: A female high school student willingly kisses a male student on one occasion. When the student subsequently attempts to kiss her again, she objects, but he kisses her anyway. This subsequent kiss is considered to be unwelcome despite the welcomeness of the first kiss.”⁶

Moreover, the objective medical reports and diagnoses support that our daughter suffered physical and psychological trauma from the sexual encounter, which is inconsistent with the perpetrator’s claim that the sexual touching was welcome. By uncritically accepting the assailant’s account, the District endorses and tolerates that when a girl tells a boy that his sexual advances are unwelcome, it is up to the boy to decide if he had persuaded her otherwise, even if he continues to act forcibly, as was the case with our daughter.

The District acknowledges that our daughter suffered PTSD from the field trip. However it asserts that it cannot determine from the objective evidence of the medical professionals who treated our daughter whether the trauma was related to a sexual assault or to some hypothetical other cause.⁶ The District never explains what the other cause might be, what evidence it has that there is any other source of the trauma, and in light of the objective medical evidence why it is more reasonable to conclude that the trauma was due to a cause other than a sexual assault.

The unbiased medical evidence that we gave the District clearly shows that our daughter suffered PTSD after the field trip and that it was due to a sexual assault and not any other cause.⁷ The District acknowledged that our daughter was harmed by the sexual encounter because it granted her a Section 504 accommodation due to PTSD. Moreover, the district approved our school transfer request for our daughter (Form 504-11, included in our document package) with the November 2012 sexual assault as the basis. The District discounts or ignores all of this evidence without explanation.

We have repeatedly expressed concern about whether the District can equitably weigh the facts in this case when it believes its liability is at stake.⁸ Our concern was further reinforced when the District’s legal team adopted an advocacy role for the perpetrator in its memoranda to the School Board. For example, the District erroneously claims that because the US Attorney’s Office declined to prosecute a

⁶ Memorandum to the School Board from Pegi McEvoy dated January 21, 2014: “While it is clear something occurred on November 7, 2012 that resulted in distress to their daughter, it is difficult to determine from the material from the investigator and provided by the parents whether any distress experienced by their daughter was necessarily caused by a nonconsensual sexual encounter, or other stressors.”

⁷ The evidence includes the examining physicians’ diagnoses of sexual assault, letters from the rape victim’s advocate who attended our daughter in the hospital emergency room, and from the therapist who treated our daughter at Harborview Center for Sexual Assault and Traumatic Stress. These documents are included in the materials we submit with this appeal.

⁸ In two email messages, General Counsel Ron English informed us of the District’s concern about its liability. “Based on the information available to us, we do not acknowledge any liability for this incident.” (April 16, 2013) “Nor does the fact that an incident occurs prove that the chaperones were at fault or that the District is liable.” (June 16, 2013)

criminal case against the assailant, it can justifiably conclude the sexual encounter was more likely than not consensual.⁹ In fact, as we told the District, neither the investigators nor the US Attorney's Office made any determination that a sexual assault did not occur. We provided a statement from the National Parks Service Chief Ranger, Colin Smith, corroborating this. Moreover, as we have repeatedly pointed out, whether criminal charges are filed against the perpetrator is irrelevant to a determination of whether conduct constitutes harassment (i.e. unwelcome sexual contact). According to OCR:

"Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably."¹⁰

As another example, we submitted our daughter's handwritten account of the assault that she wrote as part of her therapy treatment at the residential treatment center. We provided the District with authentication of this document. Yet the District's legal counsel seeks to discredit our daughter's account. They speculated on its veracity and completeness and advised the Board on the admissibility of this document in a legal proceeding. But the District's legal team did not advise the Board on the admissibility of the contents of its own investigative report. In fact, this discussion of admissibility in court is not relevant to this administrative review.

There are other examples of the District's one-sided advocacy in its communications to the Board. It says our daughter changed her initial story but does not mention that the perpetrator also changed his. In this connection the District also fails to mention that our daughter voluntarily completed her account to the FBI in a second interview once she would no longer have to face the perpetrator at school. The District cites the story of the assailant's friend, who claims to have witnessed the sexual encounter, but does not mention its investigator's report casting doubt on whether the friend actually was in the room at the time of the assault. It says the assailant believed our daughter welcomed anal sex, but does not say that its own investigator was highly skeptical of this assertion.

To summarize, the District acknowledges that our daughter and the assailant both described a sexual encounter in which she told the assailant to stop multiple times, and the assailant admits that our daughter told him to stop his sexual touching but continued anyway, yet the District concludes that it is more likely than not that the sexual encounter was entirely consensual. The physicians who treated our daughter in the emergency room diagnosed her condition as resulting from a sexual assault, yet the district disregards medical opinion and prefers to believe the assailant's story and that his actions were more likely than not welcomed by our daughter. The medical professionals who examined and treated

⁹ Memorandum to the School Board from John Cerqui dated February 20, 2014: "After interviewing everyone involved, including the female student, the federal investigators' information was turned over to the US Attorney, who decided not to file charges. This supports the conclusion that there is insufficient evidence to support a determination that a rape occurred."

¹⁰ Dear Colleague Letter, April 2011

our daughter determined that she suffered PTSD as a result of a sexual assault on the field trip, yet the District concludes that is more likely than not that the our daughter's PTSD was not connected in any way to the sexual harassment/violence that she experienced on the field trip, even though it granted her a 504 accommodation because of it and a school transfer with the sexual assault as the reason. Whether criminal charges are filed against the perpetrator is irrelevant to a determination of sexual harassment/violence, according to OCR, but it's the District's conclusion that because the US Attorney did not pursue a criminal case, the perpetrator could not have sexually harassed our daughter.

Summary. We ask OSPI to find that the District has adequate evidence to conclude that sexual harassment/violence against our daughter likely occurred and that she was harmed by it. We ask OSPI to find that the District's uncritical acceptance of the assailant's account sanctions the view that an assailant may "persuade" the victim that his forceable advances are welcome, even if she tells him otherwise. We ask OSPI to find that the District disregarded both its own definition of sexual assault in its Code of Prohibited Behavior E-215 and the definition of sexual assault in the State of Washington.

OSPI should also find that the District misled the Board about the relevance of criminal charges in determining whether our daughter suffered sexual harassment/violence.

Conclusion

Any parent whose daughter was assaulted on a school-sponsored field trip deserves to know why it was allowed to occur. The Seattle School District has delayed and frustrated all of our attempts to get answers and accountability.

We request OSPI to find and act on the following:

- The District did not comply with timelines for responding to our complaint.
- The District did not comply with OCR Title IX guidelines by immediately extending Title IX rights to providing resources for victims of sexual harassment, to inform the victim of sanctions against the perpetrator, to shield her from retaliation, and to conduct a prompt investigation to the detriment of our family.
- The District failed to provide a substantive, factual, and equitable investigation (see October 18, 2013 response to Kaiser report).
- The District failed to answer our complaint of negligent chaperoning and adult supervision and must do so. An internal review does not satisfy our request for an explanation.
- The District has, in its attempt to mitigate liability, devised ad hoc policies concerning the permissibility of sex on public school fieldstrips in contradiction to existing codes.
- The District has, in its attempt to mitigate liability, asserted that its policy is to await the conclusion of a criminal investigation before investigating reported sexual harassment, in direct contradiction to Title IX directives.
- The District has adequate evidence to conclude that sexual harassment/violence against our daughter likely occurred and that she was harmed by it.

March 18, 2014

To: OSPI - Administrative Resource Services

From: [REDACTED] and [REDACTED]

Re: Addendum to our Appeal of Seattle School District decision re sexual assault on
[REDACTED]

Please consider this letter as an addendum to our appeal of the Seattle School District decision of March 6, 2014 regarding the sexual assault of our daughter, [REDACTED].

Sincerely,

[REDACTED]

[REDACTED]

Discussion

After receiving additional information, we elaborate on points raised in our appeal letter to OSPI dated March 13, 2014.

1. Untimely response to our complaint

When Seattle Schools Superintendent Banda did not reply to our March 18, 2013 complaint, we escalated our complaint in a letter to State Superintendent Dorn's office on April 9, 2013. On April 11, Calandra Sechrist from the OSPI Equity and Civil Rights Office advised Seattle School District General Counsel Ron English to "take whatever steps are necessary to ensure that the complainants are afforded the correct procedures." The District did not do so. We never received the required reply from Superintendent Banda until January 23, 2014, despite our repeated requests to the superintendent, the District's legal office, and the Seattle School Board.¹¹

Why have a grievance policy that mandates timely responses to complaints if the District is permitted to get around to responding almost a year later?

2. Untimely investigation of a reported sexual assault

¹¹ See our emails to the District dated May 16, May 21, May 23, June 26, 2013 in the PDF document 11 Correspondence with the Seattle School District.

School districts are responsible for carrying out a prompt and equitable investigation of any report of sexual violence regardless of whether the student's parents have complained and regardless of whether the incident is under criminal investigation.¹² In direct contradiction, the Seattle School District rationalized their refusal conduct a prompt and equitable investigation of the sexual assault on our daughter because they were not aware that a federal investigation had been completed.¹³

Furthermore, on April 16, 2013, Ms. Sechrist of the OSPI Equity and Civil Rights Office advised the District's Title IX officer, Paul Apostle, to "ensure that Title IX guidance and regulations are followed." Not only did Mr. Apostle not respond to our inquiries about extending Title IX rights to our daughter, he simply abdicated his role to the District's general counsel.¹⁴ On June 24, 2013 we wrote Mr. English, Mr. Banda, the School Board, and others: "When will you answer our questions about Title IX if Mr. Apostle won't?" Mr. English replied that day writing, "I have nothing more to offer at this time." We are not alone with expressing frustration with the District's evasiveness. At least one School Board member voiced similar exasperation in an email to Superintendent Banda:

"It seems that Ron English and Paul Apostle is sweeping this under the rug without any concrete answers to these parents about their daughter being rape at a field trip. Can you tell me why is this matter not taking seriously by our district? Is this something that is alright to happened to a student and then we are just going to excuse it! Please give me a answer that makes sense because as I read Ron English and Paul Apostle's email, it seems like they are just making up excuses and ignoring the fact that these parents are serious about what has happened to their daughter. Is this a joke or what? How can we as a district overlook something as serious as this by not giving these parents a straight answer or even try to accommodate what they are complaining about. Please somebody tell me something because I am very upset with this kind of attitude that it is alright...."¹⁵

Mr. Apostle ignored OSPI counsel and did not comply with OCR Title IX guidance.¹⁶ Moreover, OCR directives state that the District's general counsel should not act in the role of Title IX officer.¹⁷

¹² Dear Colleague letter, April 2011: "Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime."

¹³ Email from Ron English dated April 7, 2013: "As previously stated, we waited, at the FBI's request, until the federal authorities completed their investigation. Until I received your letter of March 18, I was not aware they completed their work some time ago, as they did not tell us."

¹⁴ Email from Paul Apostle dated May 20, 2013: "I am referring your questions to our district attorney Ron English."

¹⁵ Email message from Betty Patu to Jose Banda dated June 24, 2013.

¹⁶ Dear Colleague letter: "The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints."

¹⁷ Dear Colleague letter: "The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest."

In its decision of March 6, 2014, the Seattle School Board says it “remains concerned about the length of time it took to initiate and conduct a proper inquiry into the event, the causes and how to prevent similar situations in the future.” It is fine for the Board to be concerned more than a year after the assault, but the District has never explained why it did not comply with OCR Title IX guidelines immediately upon our daughter’s report of a sexual assault, to the detriment of our family. In fact, we informed past Board president Kay Smith-Blum about the District’s noncompliance with OCR Title IX directives almost a year earlier, on April 28, 2013. Ms. Smith-Blum then asked District general counsel Ron English about the District’s obligations to conduct a prompt investigation, but he did not answer her.”¹⁸

Why have federal guidelines for how schools should respond to sexual harassment and sexual violence when districts can just ignore them at will?

3. Non-response to our complaint that negligent chaperoning and adult supervision created an unsafe environment in which sexual harassment could and did occur

The District’s cover-up extends to not recognizing that negligent chaperoning and adult supervision created an unsafe environment in which sexual harassment could and did occur. For example, on November 14, 2012 the District had information about male and female students going into each other’s cabins after curfew and sleeping in each other’s beds¹⁹, but as late as April 27, 2013 it pretended it knew nothing about male and female students co-mingling after curfew.²⁰

Moreover District staff created media talking points with false information about chaperoning on the field trip: that there were parent chaperones on the trip where there were actually none; that there were park chaperones on duty when there were actually none; and that there were two chaperones assigned to each cabin, when there was only one unscreened male chaperone for the cabin housing the 14 boys and no male chaperone mentioned on the principal’s list (see principal’s email of November 7, 2012).

4. Inequitably reviewed evidence to conclude that sexual harassment of our daughter had not occurred

On May 7, 2013 we submitted questions for the District’s investigator, Mr. Kaiser, asked whether parents could participate, and volunteered to do so. Our questions were not answered nor were we allowed to participate. However, parents of other students *were* invited to participate.¹¹ The district also had information from a parent whose child attended the trip that a rape had occurred, but this

¹⁸ Email message from Kay Smith-Blum to Ron English dated April 29, 2013: “Are we ‘statutorily obligated to promptly and equitably investigate complaints of sexual violence?’”

¹⁹ Email message from Garfield HS principal Ted Howard to Kristin Kirschner dated November 8, 2012.

²⁰ Email message from Ron English dated April 27, 2013: “Can you please be more specific as to what evidence you have of “co-mingling” of students? Also, we do not understand how this is relevant, i.e., caused the events which took place several hours later, after the students were in their respective cabins. Please explain.” ¹¹ Email message from Ron English to Ted Howard dated May 2, 2013.

never appeared in Mr. Kaiser's report. In fact, all of the information we supplied to Mr. Kaiser was never incorporated into a final report because the District abruptly terminated Mr. Kaiser's investigation.

In addition, during the Feb. 25, 2014 appeal hearing, the District legal counsel told the School Board that the District's senior management team was not aware of the assault until our March 18, 2013 complaint. We objected in writing to this fallacious statement following the hearing. There are numerous documents showing that the District administration was immediately made aware of the assault, including emails from Mr. English saying so. Our emails and those of □□□□□'s medical providers made numerous references to the November 7, 2012 rape.

The School Board now informs us that the District reviewed "its chaperoning practices for overnight field trips." But what good is this if teachers, chaperones, and school administrators don't follow those practices, as happened on the November, 2012 field trip. We have already pointed out how the District creates ad hoc policies regarding permissibility of sexual intercourse on field trips just to excuse itself. Even District staff expressed dissatisfaction with creating policies "on the fly."²¹

Conclusion

Any parent whose daughter was assaulted on a school-sponsored field trip deserves to know why it was allowed to occur. In this addendum we have provided further evidence of how the Seattle School District has delayed and frustrated all of our attempts to get answers and accountability.

²¹ Email message from Gary Thomas to Patsy Ethridge-Neal dated August 30, 2013: "I get the impression that rather than examining the best practices of organizations such as DECA, people are making up these 'policies' on the fly."

Please include the following documents and information in our appeal. New information was discovered after we mailed our appeal.

The Seattle School district ignored the advice given by OSPI to follow Title IX.

In an email dated April 11, 2013, Calendra Sechrist informed the district that:

1. It should undertake an investigation:

The district investigation did not commence for several weeks after OSPI informed the district that it should undertake an investigation. By May 20, 2013 Ron English still asserted that the district's email of April 16th (with a few secondhand facts) constituted an appropriate investigation: "I provided a substantive response by email on April 16, 2013, detailing all of the facts we had at that time." (This directly contradicts his email of April 7 saying that their policy is to wait for a criminal investigation to end). It appears that the district waited several more weeks after being advised to undertake the investigation to begin the process.

2. It should not have delayed their investigation for 6 months:

The district wrote on April 7 that it was their practice to await the conclusion of a criminal investigation, in direct contradiction to Title IX. OSPI informed the district on April 11 that this contradicted Title IX requirements.

In addition, the district hid its failure to conduct an investigation in the 6 months following the assault from the school board on Feb. 23, 2014. Mr. English told the school board that the district only knew of the assault on March 18, 2013. We objected in writing to this fallacious statement following our school board hearing. Our objection was provided to OSPI. There are numerous documents showing that the district knew immediately, including emails from Mr. English saying so. Our emails and those of □□□□□'s medical providers made numerous references to the November 7, 2012 rape.

We strongly object to the district counsel misinforming the school board who was to make a decision based on facts, not what the district would have them believe.

3. The district should afford the complainants the correct procedures:

The district violated the requirement to render its response to our March 18, 2013 complaint within 30 days; instead it answered 10 months later.

The correct procedures also include communicating with the Title IX officer. Title IX stipulates "In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement."

Mr. English refused to communicate regarding our daughter's rights after he was appointed to assume Mr. Apostle's role as Title IX officer.

4. On April 16, 2013 Calendra Sechrist wrote the Title IX officer, Paul Apostle that
"If you haven't already, you may want to coordinate with Mr. English on the district's response

to the parents to ensure that Title IX guidance and regulations are followed” The district ignored this advice from OSPI:

On June 24, 2013 we wrote Mr. English, Mr. Banda, the School Board, and Others: “When will you answer our questions about Title IX if Mr. Apostle won’t?” Mr. English replied that day writing, “I have nothing more to offer at this time.” (see correspondence pdf):

[Parents’ email of 6.24.13] “The facts speak for themselves. After our daughter reported the rape/sodomy on November 7, 2012, not a single person from the school district administration, including the Title IX coordinator, acknowledged that she was assaulted. Mr. Howard promised us answers that never materialized. We turned to OSPI. They informed us of the many procedures that should have been implemented, including an immediate investigation independent of a criminal investigation. Contrary to this Title IX regulation, you wrote that the district's policy is to wait until a criminal investigation is completed. It appears that the district knows very little about Title IX. No one answers our questions. Mr. Apostle forwarded our inquiry to you, but after a month no one addresses our questions about Title IX procedures. The current investigation has no bearing on the questions we asked about procedures that should have been implemented when the assault was reported in November. When will you answer our questions about Title IX if Mr. Apostle won't?. . . .”

5. When Paul Apostle abdicated his responsibilities (email May 20, 2013) to the general counsel, Ron English, he created a conflict of interest that clearly violates Title IX requirements. The Title IX official and the general counsel for the district cannot be the same person. Thus, there was no disinterested, unbiased official available to serve our daughter. Neither Mr. Apostle nor Mr. English followed OSPI’s directive to extend our daughter any Title IX rights.

The district failed to provide and equitable investigation as amply documented in our detailed responses to the investigation.

1. On May 7, 2013 we submitted questions for the district’s investigator, asked whether parents could participate, and volunteered to do so. Our questions were not answered, nor were we allowed to participate. However, parents of other students were invited to participate, as we just learned in an email dated May 2, 2013. Ron English wrote Ted Howard:

He [Kaiser] will need to interview at least four of your staff, four students and three two [sic] college student chaperones. See the attached list. I would like you to reach out to each these individuals (parents in the case of students), to let them know that Rick will be contacting them.

Nancy [Coogan] and I talked about how to approach the parents, since they might not even know about the incident. Please offer to let the parents participate in the interview.”

In the equitable investigation which Title IX guarantees, parents of the victim should be allowed to participate if parents of the assailant and other students were allowed to be participate.

2. It is doubtful that the assailant would confess to raping our daughter in the presence of his parent.
3. In addition, we have questioned the objectivity of the district's investigation in our correspondence of May, September, and October 2013 so far after the assault, when information became distorted and when teachers/administrators were at fault.
4. The district failed to disclose information in its "equitable investigation including the wealth of information we provided. In addition, a newly discovered document indicates how the district had information that a rape occurred from a parent whose child attended the trip:

From: Samar, Serena L

To: Howard II, Theodore

Cc: Lee, Lenora

Subject: Per your request

Date: Wednesday, November 14, 2012 9:05:04 AM

On Thursday, November 8, 2012 at 7:21 a.m. I arrived outside the main office where I was parking my bike. Ms. Moore caught my eye and approached me.

Ms. Moore stated there was an incident on the Ecology field trip and she took [redacted] home last night and she was very upset as was her Mom. I stated that [redacted] is naturally dramatic. Ms. Moore said, no this is a little more serious. I asked if everything was ok. She told me that there was an incident on the field trip where [redacted] witnessed a rape. She was in the top bunk. She also stated that it is still under investigation.

I thanked her for telling me about the incident. I also asked about another student on the field trip that is a male and on my caseload. She asked for his name. I replied with [redacted]. She shook her head "no" that he wasn't mentioned in the allegations.

Serena Samar

Case Manager

Language Arts Teacher Garfield

High School

slsamar@seattleschools.org

4. The district also did not disclosed in its June 2013 investigation information it obtained conducted on November 8, 2012 describing the assault. This information was provided by the principal, Ted Howard in an email entitled "summary of interview." This and other failures compromised the requirement for a fair and equitable investigation.

5. The district also tried to pretend it knew nothing of the students co-mingling after curfew as late as April 27, 2012 when it had information about students sleeping in each others' beds from the November 8, 2012. Please see our attached new complaints regarding this deception excerpted here:

From the inception of our complaint the district failed to acknowledge that there were any problems with the chaperoning. Yet this November 8, 2012 document from Mr. Howard indicates that the district clearly had information on November 8th that students were going in and out of their cabins all night and fell asleep in beds not their own. On April 27, 2013 you still represented that you knew nothing about students going in and out all night long, as if curfew had been observed. Obviously students going in and out all night long would create an environment where assault could and did occur. To pretend that you did not know what went on and that you couldn't understand how it was relevant is frankly disingenuous.

You wrote:

"Co-mingling of students: Can you please be more specific as to what evidence you have of "co-mingling" of students? Also, we do not understand how this is relevant, i.e., caused the events which took place several hours later, after the students were in their respective cabins. Please explain." (April 27, 2013)

Clearly the District knew perfectly well from November 8th from this report and information teachers garnered (including observing an interview with the so-called eyewitness) that students were going in and out all night long. We object to the disingenuous tactic of pretending that the district knew nothing of the co-mingling we referred to. Students were never in their respective cabins, as the district knew all along.

Additional:

1. We include an urgent email from School Board Vice-President to Superintendent Banda demonstrating how seven months after the assault how the Title IX officer, Paul Apostle, and General Counsel, Ron English, failed to treat the parents' complaint with the respect it was due.

From: Patu, Betty
 To: Banda, Jose L
 Subject: FW: Title IX regulations ignored
 Date: Monday, June 24, 2013 12:02:04 AM

Hi Jose,

As I read this email, it seems that Ron English and Paul Apostle is sweeping this under the rug without any concrete answers to these parents about their daughter being rape at a field trip. Can you tell me why is this matter not taking seriously by our district? Is this something that is alright to happened to a student and then we are just going to excuse it! Please give me a answer that makes sense because as I read Ron English and Paul Apostle's email, it seems like they are just making up excuses and ignoring the fact that these parents are serious about what has happened to their daughter. Is this a joke or what? How can we as a district overlook something as serious as this by not giving these parents a straight answer or even try to accommodate what they are complaining about. Please somebody tell me something because I am very upset with this kind of attitude that it is alright....

Anxiously waiting for an answer!!!!

Betty Patu
Seattle School Board District #7
206.252.0040

2. We told OSPI that the district failed to elucidate the type of accommodations our daughter required after being raped and documented this with correspondence in both our staff complaint and our Oct. 18, 2013 response. We wrote that Carole Rusimovic, the 504 coordinator, refused to communicate with us regarding the accommodations our daughter required after the assault. She confirmed this in an email to the principal saying she will no longer communicate with us. Because Ms. Rusimovic refused to reply, our daughter's educational accommodations and options were unknown and her education was further derailed. Please see the attached staff complaint to Michael Tolley.

From: Rusimovic, Carole
To: Ombudsman
Subject: RE: 504 status
Date: Friday, December 21, 2012 9:52:56 AM
Date: December 21, 2012

Ron, feel free to come and talk with me any time on this matter. I will not be putting anything else in writing for these parents.

Carole Rusimovic
Student 504 Program Coordinator/Senior Legal Assistant

Information concerning falsification of the records

1. Ted Howard, principal, misrepresented the number and identity of chaperones present on the fieldtrip to his supervisor and the legal department on the day of the assault.

- This information was intended to serve as the district's talking points to the media and others. Mr. Howard knew perfectly well that the three female chaperones he named were not sleeping in the boys' cabin, although he claimed that two chaperones "were assigned to each cabin." (11/7/12 :11:07 AM) On March 16, 2014 we amplified our complaint after discovering this information. (See 3/16/14 3:32 PM)
2. The district's media representative, Teresa Wippel, and Principal's supervisor Nancy Coogan also falsified the record. The claimed that "The trip was chaperoned by both teachers and parent chaperones." Mr. Howard had already informed them that there were only 3 staff chaperones (two of which did not chaperone at night). None of the students' parents acted as chaperones as anyone could see from the roster. Moreover there were no park chaperones as Coogan stated. The camp contract with Garfield clearly stated that chaperoning was the responsibility of the school, not the park. Garfield principals were in charge of the paperwork and would have known that. See our complaint of 3/1/14 9:03
 3. Talking points also placed all responsibility for the investigation on the FBI. It failed to admit that it had a federally mandated obligation to conduct its own Title IX investigation.

Miscellaneous:

1. Our request for information dated March 11, 2014 and the public information officer Julie Barbello further verifies the district's failure to properly plan for the filed trips over a 3 year period. We include this information to demonstrate how the district has compromised our daughter's ability to obtain an education free of harassment when unauthorized college students ignorant of the rules are allowed to watch our students.
2. We objected to OSPI that the school district's spokesperson, Ron English, created an ad hoc policy stating the sex can occur on field trips in the context of appropriate chaperoning to excuse the negligent chaperoning. We also mentioned that the district created its own policy that an investigation into sexual assault should take place upon conclusion of a criminal investigation (contrary to Title IX). Regarding such ad hoc policies, the email below states "that rather than examining the best practices of organization such as DECA, people are making up these "policies" on the fly."

To: Ethridge-Neal, Patsy

On Aug 30, 2013, at 3:53 PM, "Thomas, Gary" <glthomas@seattleschools.org> wrote:

This policy will affect all CTE leadership field trips. I get the impression that rather than examining the best practices of organization such as DECA, people are making up these "policies" on the fly.

Gary

Enclosures

1. Email from School Board Vice President Betty Patu to Superintendent Jose Banda regarding district's failures dated 6/24/13
2. Staff complaint against Howard/Coogan/Banda to Tolley dated 3/18/14
3. "Garfield staff documents creation of policies on the fly" complaint to Tolley dated 3/18/14
4. Complaint against teachers and principals to Tolley dated 3/18/14
5. Complaint concerning pretense to Tolley dated 3/16/14
6. Please add to our complaint against T. Howard to Tolley dated 3/16/14
7. False information for the news media and others to Tolley dated 3/16/14
8. Forms and procedures requested to English dated 3/16/14

From: Patu, Betty
To: Banda, Jose L
Subject: FW: Title IX regulations ignored
Date: Monday, June 24, 2013 12:02:04 AM

Hi Jose,

As I read this email, it seems that Ron English and Paul Apostle is sweeping this under the rug without any concrete answers to these parents about their daughter being rape at a field trip. Can you tell me why is this matter not taking seriously by our district? Is this something that is alright to happened to a student and then we are just going to excuse it! Please give me a answer that makes sense because as I read Ron English and Paul Apostle's email, it seems like they are just making up excuses and ignoring the fact that these parents are serious about what has happened to their daughter. Is this a joke or what? How can we as a district overlook something as serious as this by not giving these parents a straight answer or even try to accommodate what they are complaining about. Please somebody tell me something because I am very upset with this kind of attitude that it is alright....

Anxiously waiting for an answer!!!!

Betty Patu
Seattle School Board District #7
206.252.0040

----- Original Message -----

Subject:complaint against Howard/Coogan/Banda

Date:Tue, 18 Mar 2014 16:16:44 -0700

From: [REDACTED]

Reply-To: [REDACTED]

To:Tolley, Michael F <mftolley@seattleschools.org>, Banda, Jose L <jlbanda@seattleschools.org>, Coogan, Nancy E <necoogan@seattleschools.org>, Patu, Betty <bpatu@seattleschools.org>, SchoolBoard <SchoolBoard@seattleschools.org>, Hale, Theresa L <tlhale@seattleschools.org>, Howard II, Theodore <trhoward@seattleschools.org>

CC: [REDACTED]

Mr. Tolley,

Please add the following to our complaint against Ted Howard and those he reported to, including Nancy Coogan and Jose Banda. The November 8, 2012 email from Serena Samar below further supports our complaints that Mr. Howard failed to give equal consideration to our daughter's report of sexual assault.

The documentation previously submitted from the National Parks Service states that the assailant told Mr. Howard (when the bus returned from trip) that our daughter told him to stop touching her but that he proceeded to have vaginal and anal sex with her. Even though Mr. Howard knew she said to stop, he failed to consider that our daughter could have been raped. Instead he preferred to believe the assailant convinced her that vaginal and anal sex was wanted. This should be considered this in light of medical reports stating the assailant hurt our daughter after penetrating her unresponsive body.

In the information below we read that Mr. Howard also heard from a parent on November 14, 2012 about how her daughter witnessed rape (as detailed in the email below). Even with this information, Mr. Howard still failed to give equal consideration to our daughter's report of assault.

Moreover we read in other documents that the school's talking points offered support to students needing counseling after learning of the reported assault. However, no one in the district ever reached out to offer our daughter emotional support or counseling services. The Title IX officer, Paul Apostle, was to have done that immediately after the assault was reported, whether or not the district wanted to admit she could have been assaulted. We strongly object to the district's failure to extend the procedures, including counseling, that OSPI wrote (to Ron English and Paul Apostle on April 11, 2013) should have been granted.

Sincerely,

[REDACTED]

From: Samar, Serena L

To: Howard II, Theodore

Cc: Lee, Lenora

Subject: Per your request

Date: Wednesday, November 14, 2012 9:05:04 AM

On Thursday, November 8, 2012 at 7:21 a.m. I arrived outside the main office where I was parking my bike. Ms. Moore caught my eye and approached me.

Ms. Moore stated there was an incident on the Ecology field trip and she took [REDACTED] home last night and she was very upset as was her Mom. I stated that [REDACTED] is naturally dramatic. Ms. Moore said, no this is a little more serious. I asked if everything was ok. She told me that there was an incident on the field trip where [REDACTED] witnessed a rape. She was in the top bunk.

She also stated that it is still under investigation.

I thanked her for telling me about the incident. I also asked about another student on the field trip that is a male and on my caseload. She asked for his name. I replied with [redacted] . She shook her head no that he wasn't mentioned in the allegations.

Serena Samar

Case Manager

Language Arts Teacher

Garfield High School

slsamar@seattleschools.org

(206) 252-2380

FERPA, RCW 42.56.230(1)

FERPA, RCW FERPA, RCW

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FERPA, RCW

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FERPA, RCW

FERPA, RCW 42.56.230(1)

FERPA, RCW

----- Original Message -----

Subject:Garfield staff documents creation of "policies on the fly"

Date:Tue, 18 Mar 2014 16:48:13 -0700

From: [REDACTED]

Reply-To: [REDACTED]

To:Tolley, Michael F <mftolley@seattleschools.org>, English, Ron <renglish@seattleschools.org>, Banda, Jose L <jlbanda@seattleschools.org>, Patu, Betty <bpatu@seattleschools.org>, SchoolBoard <SchoolBoard@seattleschools.org>, Hale, Theresa L <tlhale@seattleschools.org>

CC: [REDACTED]

Mr. Tolley,

Please add the following to our staff complaint.

Ron English wrote that he speaks for Jose Banda, the School Board, and the District. We have complained about Mr. English's ad hoc policies concerning sex on field trips and investigation policies. As we documented, Ron English wrote twice that sex may occur on fieldtrips in the context of appropriate policies. On May 20, 2013 he wrote:

In your email to me of May 17, you asked several questions about the roles of chaperones and whether sexual intercourse could occur if the chaperones were performing their duties. I reiterate my statement of May 14: it depends on the circumstances.

We have documented how SPS guidelines state that rules that apply to the campus apply to the fieldtrip. Supervision on campus does not allow sex to occur so supervision on field trips must assure that it does not occur.

Regarding investigations, Ron English wrote numerous times that the district's policy is to wait for a criminal investigation to end before undertaking the required Title IX investigation when sexual harassment is reported. OSPI wrote to the district on April 11, 2013 and informed him that his policy is incorrect.

The email from Gary Thomas, GHS staff, below corroborates our complaint against Ron English (and those for whom he speaks) for their ad hoc policies:

Gary Thomas wrote:

"people are making up these policies on the fly,"

[REDACTED]

From: Thomas, Gary

To: Ethridge-Neal, Patsy

Subject: Re: Field Trips

Date: Saturday, August 31, 2013 7:25:09 AM

All we have are verbal instructions at a staff meeting and the email that I commented on below from GHS AP Meghan Griffin. She was quoting instructions from risk management.

As you know, there are many tricks that advisers use to minimize problems. Waking kids up in the middle of the night is not one of them. The incident that occurred was an alleged sexual assault in a barrack-like setting on a an environmental science field trip. Sent from my Verizon Wireless BlackBerry

From: "Ethridge-Neal, Patsy" <pethridge@seattleschools.org>

Date: Sat, 31 Aug 2013 06:07:15 +0000

To: Thomas, Gary <glthomas@seattleschools.org>

Cc: Davison, Mary <mkdavison@seattleschools.org>

Subject: Re: Field Trips

What happened last yr that Harfield is trying to address. I see it is Garfield developing its new policy

Sent from my iPhone

On Aug 30, 2013, at 11:04 PM, "Ethridge-Neal, Patsy"

<pethridge@seattleschools.org>

wrote:

Did u send us a copy of the policy. If so I didn't see it. I believe we have practiced

mutual aid for years. I certainly wouldn't want man keying into a girls room unannounced or vice versus I believe we have tried to ensure an advisor of each

sex has gone. Even with that I would be uncomfortable keying in a room without knocking

We need to see the policy. Is it only a Garfield policy or a district policy

Sent from my iPhone

On Aug 30, 2013, at 3:53 PM, "Thomas, Gary" <glthomas@seattleschools.org>

wrote:

This policy will affect all CTE leadership field trips. I get the impression that rather than examining the best practices of organization such as DECA, people are making up these policies on the fly.

Gary

Gary Thomas

Business Instructor

DECA & Student Store Advisor Garfield High School

Seattle, WA

From: Thomas, Gary

Sent: Friday, August 30, 2013 3:50 PM

To: Griffin, Meghan S; !Garfield Allstaff

Subject: RE: Field Trips

Thank you, Ms. Griffin,

Just to clarify, it is the policy of the Seattle School District that chaperones will use a key card to enter the hotel rooms of students who are sleeping in the middle of the night to be sure that they are in their beds.

Gary Thomas

Business Instructor

DECA & Student Store Advisor

Garfield High School

Seattle, WA

From: Griffin, Meghan S

Sent: Friday, August 30, 2013 2:00 PM

To: Griffin, Meghan S; !Garfield Allstaff

Subject: RE: Field Trips

Good afternoon~

I received a response from Risk Management regarding overnight field trip supervision and the questions of what it looks like:

It is bed checks at lights out and at least one other time (unannounced) during the night. It would be reasonable for one person to do that.

We discourage trips with only one chaperone, unless there is a mutual aid arrangement. For instance, if you have two DECA students and Ballard has four, it would be best if your teacher and the one from Ballard agree to help each other out if one of them has an emergency. Otherwise, if one student goes to the ER, the other is either stuck there for hours or at the conference unsupervised. Could be even worse if it is

the one teacher who has to go to ER. We understand that there may be trips where this is unavoidable but we would hope those are ones nearer Seattle rather than on the East Coast.

Thank you,
Meghan S. Griffin
Assistant Principal
Garfield High School
Office: 206.252.2300
Fax: 206.252.2271
msgriffin@seattleschools.org

From: Griffin, Meghan S
Sent: Friday, August 30, 2013 9:45 AM
To: !Garfield Allstaff
Cc: Griffin, Meghan S
Subject: Field Trips

Good morning~

Attached are the field trip forms for the 2013-2014 school year; one packet is for single-day trips and the other is for multi-day trips. I have also attached the Garfield High School Field Trip Procedures, and the GHS Field Trip Expectation List (this must be signed for every field trip). These will also be available on our website so that you can access them anytime. Please let me know if you have questions.

Thank you,

Meghan S. Griffin
Assistant Principal
Garfield High School
Office: 206.252.2300
Fax: 206.252.2271
msgriffin@seattleschools.org

----- Original Message -----

Subject:complaint against teachers and principals

Date:Tue, 18 Mar 2014 17:08:28 -0700

From:

Reply-To:

To:Tolley, Michael F <mftolley@seattleschools.org>, English, Ron <renglish@seattleschools.org>, Patu, Betty <bpatu@seattleschools.org>, Westering, Brad <bwestering@seattleschools.org>, Howard II, Theodore <trhoward@seattleschools.org>, SchoolBoard <SchoolBoard@seattleschools.org>, Hale, Theresa L <tlhale@seattleschools.org>

CC:

Mr. Tolley,

1. The attached policy statement states that district staff were responsible for explaining the volunteers' responsibilities on the field trip when our daughter was raped.

"In working with volunteers, district staff shall clearly explain the volunteer's responsibility for supervising students in school, on the playground and on field trips. On field trips, both students and volunteers are to be informed of the rules of student behavior and the means by which they are to be held accountable to those rules."

The district's own investigative report found that the teachers and chaperones were ignorant of the district's policies as well as NatureBridge's policy that forbid boys and girls from entering each others' cabins. Moreover, teachers and unscreened/unauthorized college student chaperones failed to sign documents stating that they read the chaperoning rules. The district staff failed to "clearly explain the volunteer's responsibilities. "As a result, students were allowed to leave their cabins all night long and our daughter was assaulted.

2. Ms. Barbello reminds us below that, "The school building is responsible for maintaining the volunteer records." Therefore, Ted Howard and Brad Westering should be responsible for producing the documents requested below.

Therefore, we request that they do so now. If not, our complaint must include their failure to supply the relevant records requested in our March 11, 2014 email below.

RE: forms and procedures requested

Wed, 12 Mar 2014 16:14:28 +0000

Volunteer <volunteer@seattleschools.org>

Barbello, Julie A <jabarbello@seattleschools.org>, '□□□□□□□□□□□□' <□□□□□□□□□□□□□□□□>.

Volunteer <volunteer@seattleschools.org>

□□□□□□□□□□ <□□□□□□□□□□□□□□□□>

Date: March 12, 2014

Hello Ms. □□□□□□□□:

The Volunteer Management Department was established for the 2013-14 school years. Prior to that, the school principal oversees the volunteer program at their schools. Volunteers in a school or a program serve at the sole discretion of the building principal, program manager or teacher. Permission to volunteer in a school may be revoked at any time by the building principal or program manager. The school building is responsible for maintaining the volunteer records. Thank you!

Volunteer Management Department

From: Barbello, Julie A
Sent: Wednesday, March 12, 2014 8:56 AM
To: [REDACTED] Volunteer
Cc: [REDACTED]
Subject: RE: forms and procedures requested

Hello [REDACTED]

Unfortunately, as the public records officer I can only gather and release records, not answer substantive questions or explain the records I produce. I can tell you that the documents I was able to locate were gathered from Ms. Snookal at Garfield High School, who has assured me that they were all the records she had for NatureBridge field trips. I also requested that the Garfield administrative staff look through their records for any additional responsive documents, but none have been found.

I would again encourage you to look at the Volunteering webpage [HERE](#). Hopefully it will answer some of your questions.

Best,

Julie

From: [REDACTED] [mailto:[REDACTED]]
Sent: Tuesday, March 11, 2014 2:07 PM
To: Volunteer; Barbello, Julie A
Cc: [REDACTED]
Subject: forms and procedures requested

Dear Ms. Barbello and Volunteer,

Thank you for your efforts. We are in the process of submitting a complaint and would appreciate receiving the following information as soon as possible. Owing to the possibility of overlooking questions, please add your comments in **UPPER CASE BOLD** next to our questions.

Please explain why documents could not be located.

Please explain the procedures in which documents are returned and filed with the district. For example, what must a teacher do with the permission slips he/she collects? What must the district do to preserve those forms and for what period of time?

Who is ultimately responsible when the forms are not found?

Please confirm the following is correct for the classes taken to NatureBridge 2009-2012: please add **YES or NO where relevant**

2009

Colleen Kellogg when screened?

Heather Snookal (when screened?)

no male chaperone

no additional adults registered

total number of male students

total number of female students

no permission slips or other documents filed

missing documents that should have been filed were:

2010

No district chaperone forms filed out
Were any of the chaperones or teachers screened, and if so, who:
OPI chaperone form listing:
Heather Snookal (last screened?)
Andrew Kosydar, (unscreened college student)
Siri Nelson (screened)
"Jasmin" (not screened)
total number of male students
total number of female students
a number of partners whose names are:
no permission slips or other documents filed
missing documents that should have been filed were:

2011

chaperones were not listed
total number of male students
total number of female students
no permission slips or other documents filed
missing documents that should have been filed were:

2012

no male chaperone designated
Alicia Arnold screened appropriately?
Heather Snookal (appropriately screened?)
Rachel-Petrik Finley (appropriately screened?)
Shelley Stromholt (unauthorized, attended but was not listed or screened)
Nick Ward or Nick Fraize (unauthorized, unscreened college student)

total number of male students
total number of female students
missing documents that should have been filed were:

Please attach all forms (even if blank) that teachers, principals, and others were required to have filled out for the 2009-2012 field trips

When was the principal's checklist form that was used in 2012 created?

When was Superintendent Procedure 2320 SPC created?

Were Snookal and Petrik-Finly screened annually as required?

Are we correct in stating that all adults must be screened, whether or not they are actually chaperoning, but are still in the presence of students?

Please tell us what the chaperones and teachers were were required to do that they did not do: for example. p16 of the 8/25/07 SPS Fieldtrip procedures states that there is to be an informational meeting with records kept. Is that information to be turned into the district?

Please explain why these procedures were not verified

Who is responsible for verifying that the procedures are carried out?

Please tell us why forms are missing, such as permission slips, screening forms, etc.

Were teachers and chaperones required to meet the following requirements?

If they did not meet the requirements, who is responsible?

<http://bit.ly/SPS-Volunteering>

___ I have viewed the on-line course related to "Adult Sexual Misconduct Prevention."

___ I have read and sign the Volunteer Handbook

___ I have read the Field Trip Supervision Procedures

___ I have read and adhere to Policy No. 3246 (Use of Reasonable Force)

Please tell us anything else the chaperones and teachers were required to do, e.g.:
hold informational meeting for parents
teachers educate the chaperones about the procedures
teachers read the procedures themselves

Thank you,

[REDACTED]

Subject:

RE: screening

Date:

Thu, 6 Mar 2014 23:56:54 +0000

From:

Barbello, Julie A <jjbarbello@seattleschools.org>

To:

[REDACTED]

CC:

[REDACTED]

Volunteer <volunteer@seattleschools.org>

Hello [REDACTED]

I received your emails with the records you were given for the 2012 field trip. Unfortunately, I was not able to locate any other records relating to NatureBridge field trips for 2009-2011. I'm sorry that the records provided didn't meet your expectations! After a good faith and diligent search, these were the only documents that could be located.

Additionally, the adults and chaperones screened to participate in the 2009-2011 field trips were included in the materials I sent. According to those records, the 2009 chaperones included Colleen Kellogg and Heather Snookal. The 2010 chaperones were Heather Snookal, Andrew Kosydar, and Siri Nelson. The 2011 chaperones were not listed. There may have been other chaperones that were not named.

For your questions regarding chaperone screening and volunteer policies, I am cc'ing our volunteer management department. They will be able to answer your questions, as they are the experts on this subject. I would also encourage you to check out our volunteer webpage [HERE](#). You will find lots of documents and information about the chaperone screening process.

From: [REDACTED] [mailto:[REDACTED]]

Sent: Thursday, March 06, 2014 1:34 PM

To: Barbello, Julie A
Cc:
□□□□□□□□□□
Subject: screening

Ms. Barbello,

We are requesting a list of all the adults and chaperones screened to participate in the field trips to NatureBridge in 2009-2012.


Please let us know if the screening must occur only once or annually, or at a particular interval.

Are we correct in stating that all adults must be screened, whether or not they are actually chaperoning, but are still in the presence of students?

Please let us know that you received the email amplifying our request for the full set of documents for 2009-2011 NatureBridge

trips. Thank you, □□□□□□□□□□□□

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	<p>VOLUNTEERS</p>	<p>Policy No. 5630</p> <p>October 19, 2011</p> <p>Page 1 of 1</p>
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The Seattle School Board recognizes the valuable contribution made to the total school program through the volunteer assistance of parents and other citizens. In working with volunteers, district staff shall clearly explain the volunteer's responsibility for supervising students in school, on the playground and on field trips. On field trips, both students and volunteers are to be informed of the rules of student behavior and the means by which they are to be held accountable to those rules.

Volunteers are encouraged to report any inappropriate behavior or governmental action that they observe to the building administrator, their supervisor or the Seattle Ethics and Elections Commission.

Volunteers in a school or a program serve at the sole discretion of the building principal, program manager or teacher. Permission to volunteer in a school may be revoked at any time by the building principal or program manager. If permission to volunteer is revoked, an appeal may be filed using the process indicated in Policy No. 4220.

Volunteers are eligible for indemnification under district policy G64.00.

The Superintendent or his/her designee shall be responsible for developing and implementing procedures for the utilization of volunteers. The selection and use of volunteers will be consistent with those policies and procedures as specified for unsupervised volunteers as specified in Policy No. 5005.

These guidelines do not address volunteer work parties or "Self Help" projects that take place after a school day or on a weekend.

Adopted: October 2011

Revised:

Cross Reference: Policy Nos. 4220; 5005; D49.00

Related Superintendent Procedure:

Previous Policies: E13.00

Legal References: RCW 43.43.830-840 Washington State Criminal Code Records; WAC 446-20-285

Management Resources:

----- Original Message -----

Subject:complaint concerning pretense

Date:Sun, 16 Mar 2014 20:53:38 -0700

From: [REDACTED]

Reply-To: [REDACTED]

To:Tolley, Michael F <mftolley@seattleschools.org>, SchoolBoard <SchoolBoard@seattleschools.org>, Hale, Theresa L <tlhale@seattleschools.org>, Banda, Jose L <jlbanda@seattleschools.org>, betty.patu@seattleschools.org, Howard II, Theodore <trhoward@seattleschools.org>, English, Ron <renglish@seattleschools.org>

CC: [REDACTED]

Mr. Tolley,

Please add the following to our complaint against Ron English, Jose Banda, Ted Howard, and the legal department for pretending they knew nothing 5 months after the assault (April 27, 2103 email) about students co-mingling after curfew. The District knew from Ted Howard's November 8, 2012 report (attached) and the information that teachers garnered immediately after the November 7, 2012 assault that students left their cabins all night long and fell asleep in other students' beds. This complaint is detailed below.

The complaint against Ted Howard is based upon the fact that he had this information and should have immediately stopped the pretense that the district knew nothing. As you will read, the district still pretended it knew nothing about co-mingling more than five months after the assault. (See English's statement of April 27, 2013 below).

We request Ron English to provide a truthful explanation:

Mr. English,

You instructed us to ask you about the content of public records. Would you please explain:

- Why Mr. Howard sent the attached November 8, 2012 information to Kristin Kirschner
- Who obtained this information?
- Is the student giving the interview the victim or another student?
- Why this information failed to appear in the Kaiser report since the district had it from November 8, 2012?

From the inception of our complaint the district failed to acknowledge that there were any problems with the chaperoning. Yet this November 8, 2012 document from Mr. Howard indicates that the district clearly had information on November 8th that students were going in and out of their cabins all night and fell asleep in beds not their own. On April 27, 2013 you still represented that you knew nothing about students going in and out all night long, as if curfew had been observed. Obviously students going in and out all night long would create an environment where assault could and did occur. To pretend that you did not know what went on and that you couldn't understand how it was relevant is frankly disingenuous.

You wrote:

"Co-mingling of students: Can you please be more specific as to what evidence you have of "co-mingling" of students? Also, we do not understand how this is relevant, i.e., caused the events which took place several hours later, after the students were in their respective cabins. Please explain." (April 27, 2013)

Clearly the District knew perfectly well from November 8th from this report and information teachers garnered (including observing an interview with the so-called eyewitness) that students were going in and out all night long. We object to the disingenuous tactic of pretending that the district knew nothing of the co-mingling we referred to. Students were never in their respective cabins, as the district knew all along.

Sincerely,

[REDACTED]

From: [Howard II, Theodore](#)
To: "[Kristin_Kirschner@nps.gov](#)"
Subject: Summary of interview [FERPA, RCW 42.56.230](#) case number 12-502
Date: Thursday, November 08, 2012 12:24:02 PM

Here is the information from the interview this morning at 11:50 AM

- Lights out at 10PM Chaperone was Shelly Cohen for Tuesday night and Wednesday morning
- [FERPA, RCW 42.56.230\(1\)](#) left the cabin through the window between the time of 10:30-10:45 she told [FERPA, RCW 42.56.230\(1\)](#) and [FERPA, RCW 42.56.230\(1\)](#) that she was going to [FERPA, RCW 42.56.230\(1\)](#) cabin she stated [FERPA, RCW 42.56.230\(1\)](#) it's her turn to talk to him because last night he shared with her
- [FERPA, RCW 42.56.230\(1\)](#), in the girls cabin was sleep when [FERPA, RCW 42.56.230\(1\)](#) and [FERPA, RCW 42.56.230\(1\)](#) climbed out of the window.
- [FERPA, RCW 42.56.230\(1\)](#), shut the window after [FERPA, RCW 42.56.230\(1\)](#) and [FERPA, RCW 42.56.230\(1\)](#) climbed out of the window
- [FERPA, RCW 42.56.230\(1\)](#) [FERPA, RCW 42.56.230\(1\)](#) went to the boys cabin around 11:00 PM, Boys in the cabin were [FERPA, RCW 42.56.230\(1\)](#), [FERPA, RCW 42.56.230\(1\)](#), [FERPA, RCW 42.56.230\(1\)](#), [FERPA, RCW 42.56.230\(1\)](#), [FERPA, RCW 42.56.230\(1\)](#); [FERPA, RCW 42.56.230\(1\)](#) stated they talked about (school, the trip, people) [FERPA, RCW 42.56.230\(1\)](#) fell asleep in [FERPA, RCW 42.56.230\(1\)](#) bed and [FERPA, RCW 42.56.230\(1\)](#) fell asleep in [FERPA, RCW 42.56.230\(1\)](#) bed.
- Upon arriving to the boys cabin [FERPA, RCW 42.56.230\(1\)](#) said she open the door to [FERPA, RCW 42.56.230\(1\)](#) cabin and called for [FERPA, RCW 42.56.230\(1\)](#) The lights were out and it was dark. [FERPA, RCW 42.56.230\(1\)](#) never answered.
- [FERPA, RCW 42.56.230\(1\)](#) and [FERPA, RCW 42.56.230\(1\)](#) went in and out of [FERPA, RCW 42.56.230\(1\)](#) cabin at the beginning of the night.
- [FERPA, RCW 42.56.230\(1\)](#) and [FERPA, RCW 42.56.230\(1\)](#) returned to their cabin around 4:30 AM and [FERPA, RCW 42.56.230\(1\)](#) was already sleep in her bed and [FERPA, RCW 42.56.230\(1\)](#) was sleep also.
- [FERPA, RCW 42.56.230\(1\)](#) alarm went off at 5:30 AM and [FERPA, RCW 42.56.230\(1\)](#) and [FERPA, RCW 42.56.230\(1\)](#) were still sleep. [FERPA, RCW 42.56.230\(1\)](#) was zipped up in her sleeping bag.

Ted Howard II
Principal

GHS mission

Recognizing our diverse history, Garfield educates all students as they build confidence, become active citizens and achieve academic excellence.

Mr. Tolley,

Please add the following to our complaint against Ted Howard. In his email of November 7, 2012 **he falsified the record about the identity and number of chaperones present on the field trip when our daughter was raped.**

He states there were two chaperones in each cabin. How could that be? He lists three chaperones below all of whom are female. Female chaperones are not permitted to sleep in male cabins.

The chaperones he lists below are Alicia Arnold, Heather Snookal, and Rachel Finley.

Snookal and Finley did not chaperone at night. They slept in a distant part of the camp, unable to see or hear the students. **The only screened chaperone for 27 students was Alicia Arnold.**

There were not two chaperones in the boys' cabin as Ted Howard claimed. We now know that there was only one unscreened male college student that Ted Howard does not mention. As you know, the district strongly discourages conducting a field trip with only one chaperone for each gender owing to emergencies that could leave those students unchaperoned by a chaperone of the same sex. For example, if the sole male chaperone had to accompany a male student to the hospital, no male chaperone would be left to supervise the boys at night. Of course as we know, the male chaperone that was there failed to supervise the boys.

Ted Howard also does not disclose that of the two chaperones in the girls cabin, one was Shelley Stromholt. Shelly Stromholt was another unscreened college student.

We strongly object to Ted Howard misrepresenting the identity and number of chaperones to his supervisor, Nancy Coogan, and the legal department.

Sincerely,

□□□□□□□□□□ and □□□□□□□□

From: Coogan, Nancy E
Sent: Wednesday, November 07, 2012 11:07 AM
To: Howard II, Theodore; McEvoy, Pegi; Dorsey, Larry Subject: RE: Alleged Rape of a Garfield student!

Thank you Ted. I also request that the student needs to be examined at the hospital as discussed.

From: Howard II, Theodore
Sent: Wednesday, November 07, 2012 11:02 AM To: McEvoy, Pegi; Dorsey, Larry; Coogan, Nancy E Cc: Howard II, Theodore
Subject: Alleged Rape of a Garfield student!

Place: Olympic National Park
Address: Nature Bride at Olympic National Park 111 Barnes Point Road Port Angeles, WA 98363
Phone 360-9283720

Chaperones 3 Chaperones Teachers attended from GHS Alicia Arnold
Rachel Finley
Heather Snookal

Total students attended 27

Students slept in a cabins specific to gender Boys together and Girls together. Two chaperones were assigned to each cabin. /

No specific time on when the alleged incident occurred.

Ms. Snookal was notified by another student by the name of

What is being reported by the teacher (Heather Snookal) Student was sleep, someone put their hands over her mouth, and proceeded to have sexual intercourse with the student in the bed.

Questions: Can the student recognize who did this? Was it an adult or a student? Time it occurred?

There are bunk beds, it's not clear if she was on the top bunk or bottom at this time.

Ms. Finley is the teacher who is assigned to stay with the students since the incident was reported.

Steps Garfield has taken

1. Phone call by the teacher (Heather Snookal) reported the information to me (Ted Howard) at approximately 10:AM
2. I Contacted our community police officer (Bennie Radford)
3. I contacted the Executive Director Nancy Coogan

Next Steps

1. Teacher is going to contact the police and the Park ranger
2. Parents are going to be contacted
3. Prepare for students to leave the area and come back to the school.

I am sending in part two of this email the students information and the student who reported the incident.

Please advise me if I need to take additional steps in this incident.

Ted Howard II Principal

GHS mission

Recognizing our diverse history, Garfield educates all students as they build confidence, become active citizens and achieve academic excellence.

----- Original Message -----

Subject: false information for the news media and others

Date: Sun, 16 Mar 2014 21:03:37 -0700

From: [REDACTED]

Reply-To: [REDACTED]

To: Tolley, Michael F <mftolley@seattleschools.org>, English, Ron <renglish@seattleschools.org>, SchoolBoard <SchoolBoard@seattleschools.org>, Patu, Betty <bpatu@seattleschools.org>, Coogan, Nancy E <necoogan@seattleschools.org>, Howard II, Theodore <trhoward@seattleschools.org>, Hale, Theresa L <tlhale@seattleschools.org>

CC: [REDACTED] "Banda, Jose L" <jlbanda@seattleschools.org>

Dear Mr. Tolley,

Please include Nancy Coogan and Teresa Wippel in our complaint. We strongly object to the false information they prepared in the district's November 7, 2012 talking points for the news media and others (see below). For example, "The field trip was chaperoned by both teachers and parent chaperones." None of the students' parents acted as chaperones. The district knew that perfectly well from the chaperone roster. Moreover, there were no park chaperones as Nancy Coogan stated below. The NatureBridge contract with the school stated that Garfield High School chaperones were required to chaperone their students according to the camp's rules. The chaperones failed to do so.

We strongly object to the District's plan to tell the media that the school had chaperoned appropriately when the school's records showed that no such parents were listed as chaperones and that chaperone list did not even include a single male chaperone for the boys' cabin.

The talking points place all responsibility for the investigation on the FBI. The school district has a federally mandated Title IX obligation to promptly conduct its own investigation whether or not a criminal investigation is underway. OSPI has repeatedly told the district that it was to have conducted its own independent investigation without relying on the FBI.

We see from the talking points and Ted Howard's email of November 8, 2012 falsifying the information about the identity and number of chaperones that the district has been covering up the facts from the inception of the assault.

[REDACTED]

From: Coogan, Nancy E
To: Wippel, Teresa
Cc: McEvoy, Pegi
Subject: RE: more needed
Date: Wednesday, November 07, 2012 3:00:56 PM

I would change "where the alleged assault occurred."
There were also "park chaperones" but not sure who they were.
The students have not left yet to my knowledge because they may be interviewing. How about the students are scheduled

to return today (broader) Thanks Teresa.

From: Wippel, Teresa
Sent: Wednesday, November 07, 2012 2:58 PM To: Coogan, Nancy E
Cc: McEvoy, Pegi
Subject: RE: more needed

Here are some talking points

- A 10th grade Garfield High School student reported she was sexually assaulted Tuesday night while participating in an overnight ecology program field trip at NatureBridge at Olympic Park on the Olympic Peninsula.

- The students were staying in cabins in the Olympic National Forest as part of a school field trip when the alleged assault occurred. The field trip was chaperoned by both teachers and parent chaperones.

- The students returned to school on schedule Wednesday afternoon.

- The safety and security of our students is our highest priority and we immediately notified law enforcement when

we learned of this incident.

- Because the alleged assault occurred on federal park property, the FBI is the agency responsible, and they are now

conducting an investigation.

From: Coogan, Nancy E

Sent: Wednesday, November 07, 2012 2:46 PM To: Wippel, Teresa
Cc: McEvoy, Pegi
Subject: FW: more needed
Importance: High

Teresa, Since the feds are involved I believe changes what we can and cannot communicate. We cannot compromise their investigation. Having said that, can you provide Ted some talking points? I will go over there after my interviews at Coe, but won't arrive until 7:30 or so.

From: Coogan, Nancy E
To: Wippel, Teresa
Cc: Rogers, Lesley A
Subject: RE: Garfield
Date: Wednesday, November 07, 2012 11:27:03 AM

I will get the rest. Stay tuned...

From: Wippel, Teresa
Sent: Wednesday, November 07, 2012 11:19 AM To: Coogan, Nancy E
Cc: Rogers, Lesley A
Subject: Garfield

Nancy – see my draft talking points and my questions below. Lesley may have some questions/thoughts to add.

- A 10th grade Garfield High School student reported she was sexually assaulted Tuesday night while participating in an overnight field trip on the Olympic Peninsula.
- The students were staying in cabins in the Olympic National Forest as part of a field trip through Garfield's **science field trip** when the alleged assault occurred. The field trip was chaperoned by both teachers, **park employees** and parent chaperones.
- The safety and security of our students is our highest priority and we immediately notified local law enforcement authorities when we learned of this incident. They are now conducting an investigation into the report. (Nancy – need confirmation of which law enforcement agencies were notified). **Checking on this.**
- Students returned to the school from the field trip Wednesday afternoon (was this the regularly scheduled time).

Nancy – follow-up questions that I am likely to get from reporters:

- The exact time frame, duration and purpose of the field trip. Have we done this before at this venue or any similar (remote campground)? Any previous incidents/issues reported in past field trips?
- How many students? How many adults? **2**
- How many nights were students in the cabins? How many girls in each girls cabin, how many boys in each boys cabin, how many adults in each?
- When were other students/chaperones notified of what occurred?
- Will we be making counselors available to any of the students on the field trip who need it?

Teresa Wippel
Media Relations Seattle Public Schools 206-252-0203

----- Original Message -----

Subject:forms and procedures requested

Date:Sun, 16 Mar 2014 22:08:34 -0700

From: [REDACTED]

Reply-To: [REDACTED]

To:English, Ron <renglish@seattleschools.org>

CC:SchoolBoard <SchoolBoard@seattleschools.org>, "Banda, Jose L" <jlbanda@seattleschools.org>, "Hale, Theresa L" <tlhale@seattleschools.org>, "Patu, Betty" <bpatu@seattleschools.org>, "Howard II, Theodore" <trhoward@seattleschools.org>, "Westering, Brad" <bewestering@seattleschools.org>, "Tolley, Michael F" <mftolley@seattleschools.org>

Mr. English,

You requested on March 13, 2014 that we direct our questions to you rather than Ms. Barbello. Please provide the answers requested in our March 11, 2014 email below. These are simple answers that any parent is entitled to have.

District policy states that:

"Principals are responsible for ensuring that appropriate levels of supervision are provided, with required ratio of district employees and properly background checked volunteers to students. Principal's signature on the field trip approval form certifies that he or she has verified this supervision will be in place."

Bearing in mind this requirement, the principals and Mr. Tolley are included on this communication.

[REDACTED]

----- Original Message -----

Subject:Re: forms and procedures requested

Date:Wed, 12 Mar 2014 11:02:26 -0700

From: [REDACTED]

Reply-To: [REDACTED]

To:Volunteer <volunteer@seattleschools.org>, "Barbello, Julie A" <jabarbello@seattleschools.org>

CC: [REDACTED] "Tolley, Michael F" <mftolley@seattleschools.org>

From: [REDACTED]

Sent: Tuesday, March 11, 2014 2:07 PM

To: Volunteer; Barbello, Julie A

Cc: [REDACTED]

Subject: forms and procedures requested

Dear Ms. Barbello and Volunteer,

Thank you for your efforts. We are in the process of submitting a complaint and would appreciate receiving the following information as soon as possible. Owing to the possibility of overlooking questions, please add your comments in **UPPER CASE BOLD** next to our questions.

Please explain why documents could not be located.

Please explain the procedures in which documents are returned and filed with the district. For example, what must a teacher do with the permission slips he/she collects? What must the district do to preserve those forms and for what period of time?

Who is ultimately responsible when the forms are not found?

Please confirm the following is correct for the classes taken to NatureBridge 2009-2012: please add **YES or NO where relevant**

2009

Colleen Kellogg when screened?
Heather Snookal (when screened?)
no male chaperone
no additional adults registered
total number of male students
total number of female students
no permission slips or other documents filed
missing documents that should have been filed were:

2010

No district chaperone forms filed out
Were any of the chaperones or teachers screened, and if so, who:
OPI chaperone form listing:
Heather Snookal (last screened?)
Andrew Kosydar, (unscreened college student)
Siri Nelson (screened)
"Jasmin" (not screened)
total number of male students
total number of female students
a number of partners whose names are:
no permission slips or other documents filed
missing documents that should have been filed were:

2011

chaperones were not listed
total number of male students
total number of female students
no permission slips or other documents filed
missing documents that should have been filed were:

2012

no male chaperone designated
Alicia Arnold screened appropriately?
Heather Snookal (appropriately screened?)
Rachel-Petrik Finley (appropriately screened?)
Shelley Stromholt (unauthorized, attended but was not listed or screened)
Nick Ward or Nick Fraize (unauthorized, unscreened college student)

total number of male students
total number of female students
missing documents that should have been filed were:

Please attach all forms (even if blank) that teachers, principals, and others were required to have filled out for the 2009-2012 field trips

When was the principal's checklist form that was used in 2012 created?

When was Superintendent Procedure 2320 SPC created?

Were Snookal and Petrik-Finley screened annually as required?

Are we correct in stating that all adults must be screened, whether or not they are actually chaperoning, but are still in the presence of students?

Please tell us what the chaperones and teachers were were required to do that they did not do: for example. p16 of the 8/25/07 SPS Fieldtrip procedures states that there is to be an informational meeting with records kept. Is that information to be turned into the district?

Please explain why these procedures were not verified

Who is responsible for verifying that the procedures are carried out?

Please tell us why forms are missing, such as permission slips, screening forms, etc.

Were teachers and chaperones required to meet the following requirements?

If they did not meet the requirements, who is responsible?

<http://bit.ly/SPS-Volunteering>

___ I have viewed the on-line course related to "Adult Sexual Misconduct Prevention."

☐ I have read and sign the Volunteer Handbook
☐ I have read the Field Trip Supervision Procedures
☐ I have read and adhere to Policy No. 3246 (Use of Reasonable Force)

Principals are responsible for ensuring that appropriate levels of supervision are provided, with required ratio of district employees and properly background checked volunteers to students. Principal's signature on the field trip approval form certifies that he or she has verified this supervision will be in place.

Please tell us anything else the chaperones and teachers were required to do, e.g.:
hold informational meeting for parents
teachers educate the chaperones about the procedures
teachers read the procedures themselves

Thank you,

[REDACTED]

----- Original Message -----

Subject: RE: screening

Date: Thu, 6 Mar 2014 23:56:54 +0000

From: Barbello, Julie A <jabarbello@seattleschools.org>

To: [REDACTED]

CC: [REDACTED] Volunteer <volunteer@seattleschools.org>

Hello [REDACTED]

I received your emails with the records you were given for the 2012 field trip. Unfortunately, I was not able to locate any other records relating to NatureBridge field trips for 2009-2011. I'm sorry that the records provided didn't meet your expectations! After a good faith and diligent search, these were the only documents that could be located.

Additionally, the adults and chaperones screened to participate in the 2009-2011 field trips were included in the materials I sent. According to those records, the 2009 chaperones included Colleen Kellogg and Heather Snookal. The 2010 chaperones were Heather Snookal, Andrew Kosydar, and Siri Nelson. The 2011 chaperones were not listed. There may have been other chaperones that were not named.

For your questions regarding chaperone screening and volunteer policies, I am cc'ing our volunteer management department. They will be able to answer your questions, as they are the experts on this subject. I would also encourage you to check out our volunteer webpage [HERE](#). You will find lots of documents and information about the chaperone screening process.

Thanks,

Julie

From: [REDACTED]
Sent: Thursday, March 06, 2014 1:34 PM
To: Barbello, Julie A
Cc: [REDACTED]
Subject: screening

Ms. Barbello,

We are requesting a list of all the adults and chaperones screened to participate in the field trips to NatureBridge in 2009-2012.

Please let us know if the screening must occur only once or annually, or at a particular interval.

Are we correct in stating that all adults must be screened, whether or not they are actually chaperoning, but are still in the presence of students?

Please let us know that you received the email amplifying our request for the full set of documents for 2009-2011 NatureBridge trips.

Thank you,



March 6, 2014

Sent via email to:

[REDACTED]

Re: Appeal to School Board

Dear [REDACTED]

The purpose for this letter is to respond to your sexual harassment appeal filed with the Seattle School District ("District") Board of Directors ("Board") under District Superintendent Procedure 3208SP. You appealed the January 23, 2014 decision by Superintendent Jose Banda which determined that there is insufficient evidence to conclude your daughter was the victim of harassment.

A quorum of the Board met on February 25, 2014 to hear from you as to why Superintendent Banda's decision should be modified or changed.¹ Prior to the meeting, you submitted materials which were delivered to the School Board, and a letter dated February 20, 2014, responding to the memorandum of Deputy General Counsel John Cerqui.

Discussion

As a preliminary matter, the Board wants to thank you for presenting your concerns. The Board adopted Board Policy 3208, Sexual Harassment because we want all students to be educated in an environment free from sexual harassment.

The purpose for the Board's review is to evaluate the sexual harassment and assault issues raised in your appeal, the investigation, and the Superintendent's decision, and thereafter determine whether the facts contained in the investigative report support the conclusions made by Superintendent Banda.

The Board has considered the materials you submitted in anticipation of the hearing, including your memorandum responding to the materials submitted by staff. The Board has also considered the statements you each made and submitted for the hearing itself, as well as the email you delivered to the Board after the conclusion of the hearing.

After a careful review of the materials provided and comments made during our meeting, and in particular the conflicting evidence as to what happened in this incident, a majority of the Board upholds the conclusions and findings made by Superintendent Banda.

We do wish to note, however, that this decision is limited to the appeal under Board Policy 3208, and does not address the other concerns you have raised with respect to this incident. In that regard we wish to advise you of the following:

¹ The quorum of the Board included Stephan Blanford, Sherry Carr, Harium Martin-Morris, Marty McLaren, Betty Patu, and Sue Peters.

1. The District has conducted a review of its chaperoning practices for overnight field trips. Changes made since last summer include revised procedures to conduct background checks for volunteers, and establishment of a checklist and central office review of arrangements for field trips. All school administrators were trained on these revised procedures in August 2013.
2. As you have previously been advised, your complaints against several District employees are being reviewed by Assistant Superintendent for Teaching and Learning Michael Tolley. The Board has been assured a review will be done of the events detailed in your complaint and supplemental materials and appropriate disciplinary or other action will be taken with respect to any misconduct which may be identified.
3. The Board remains concerned about the length of time it took to initiate and conduct a proper inquiry into the event, the causes and how to prevent similar situations in the future. The Board will be looking at our practices on field trips as part of our overall efforts to assure the safety of students and I will recommend it be part of our work plan for the appropriate Board committee.
4. The Board has also asked the Superintendent to review procedures for handling emergency situations that arise, whether at school or on field trips, to assure both that appropriate communication is made with parents and that appropriate central staff are informed of events, so that prompt assistance can be provided where needed.


Decision and Appeal Rights

Superintendent Banda's decision that he was unable to determine whether your daughter had been sexually assaulted is upheld.

This is a final decision by the District on your complaints. If you are not satisfied with the Board's response, you may appeal to the Office of the Superintendent of Public Instruction ("OSPI"). A written appeal must be mailed or hand-delivered to OSPI's Administrative Resource Services at P.O. Box 47200, Olympia, WA 98504 by the 20th calendar day after you receive this written decision. These appeal procedures are pursuant to WAC 392-190-065, 392-190-070, and 392-190-075 and Board Policy 3207 and 3210.

Again, thank you for your time and for your presentation.

Sincerely,



Betty Patu
Board Vice-President

cc: Jose Banda, Superintendent
Michael Tolley, Assistant Superintendent for Teaching & Learning
Pegi McEvoy, Assistant Superintendent for Operations

Subject: for immediate distribution

From: [REDACTED]

Date: 2/25/2014 8:47 PM

To: "Hale, Theresa L" <tlhale@seattleschools.org>, "English, Ron" <renglish@seattleschools.org>, "Cerqui, John" <JCERQUI@seattleschools.org>

CC: "Calandra.Sechrist@k12.wa.us" <Calandra.Sechrist@k12.wa.us>, schoolboard@seattleschools.org, [REDACTED]
[REDACTED]

School Board Directors:

Please note some of the following misinformation you were given tonight. Decisions must be made on facts and Mr. English has forgotten them. We have also sent you tonight's statements for review.

1. Ron English said that the SPS administration was unaware of a rape until our March 2013 complaint and that an investigation was promptly conducted. In a message of April 17, Ron English stated that the school had been notified of a rape the same day. "On the morning of November 7, . . . the parents, the Park Ranger, local police and FBI were all notified, as well as the principal, who notified the executive director of schools and SPS security." You were provided this correspondence in the pdf submitted in October 2013.

This is just one example of how the district remodels the facts to convince you that it proceeded appropriately.

2. In addition: the assault was reported to the teachers the morning of the rape. Petrik-Finlay and Snookal were in the hospital. We spoke with Mr. Howard on November 8th about the rape and corresponded with him the same day. The legal department received a request from [REDACTED]'s physician for HIV testing of the assailant. We provided this correspondence. We spoke with the Ombudsman. Why does the SPS administration claim it was unaware of the rape until our March complaint? To mitigate liability.

3. Mr. English admits that the school didn't undertake an investigation. When OSPI informed us that the school was required to undertake a prompt investigation, Mr. English reversed himself and wrote that the district actually had undertaken an investigation although he lacked a grasp of the most basic information such as the number of students or chaperones. His reversal is documented in the correspondence pdf. If had conducted an investigation, why didn't he convey the results of his "investigation" as required by Title IX?

4. The so-called eye witness upon which Mr. Cerqui relied testified to the National Parks Service that "he had the assailant's back." We provided this information and an analysis of all the contradictory information in the reports. We pointed out that he even described a girl whose appearance and clothing were unlike our daughter's. The assailant couldn't even verify if his friend were in the room at the time of the assault.

5. The assailant admitted many times to the NPS, to Mr. Howard, and to Mr. Kaiser that our daughter told him to stop, yet he raped and sodomized her. He met the definition of sexual assault in the district's Code of Prohibited Behaviors E-215 and rape in Washington state. Consider how the district prefers to believe his story even when he admitted that she told him to stop. Remember too that he had been excluded from middle school for having sex on school property on the lunch period. Was that also "consensual" sex?

6. The SPS legal team gave the directors inaccurate information regarding the absence of criminal charges against the assailant. *Criminal charges require a different standard of proof than charges of sexual harassment and sexual violence.* We have quoted this information numerous times from the Dear Colleague Letter. The directors should review NPS Chief Ranger Colin Smith's objective statement: the US Attorney's Office made no determination that a sexual assault did not occur.

Whether this case was prosecuted is irrelevant. A sexual assault was reported. The district had an obligation to conduct a prompt investigation after it was reported in November. Had it done so, had the district interviewed our daughter and the assailant before his story became legend, it could have uncovered the details of the assault. Instead of doing so, the district blames the parents for following the advice of the therapists to protect [REDACTED] from further trauma.

7. Mr. English would have you believe that it did everything possible to serve our daughter when parents had to find out about Home Hospital tutoring a few days before she would have been dropped from enrollment. Her accommodations were mangled at every turn, as we have amply documented. He also claimed she received full credit for the semester when she only received full credit for [REDACTED]. Her transcript bears credit in the amount of .25, not .5 for all but one of her classes.

8. The district granted her a transfer to Roosevelt with sexual assault on the November fieldtrip for the reason for the transfer. We provided the application containing this as the reason. The district knows she was assaulted but pretends otherwise. [REDACTED] could not attend Roosevelt because the 504 department ceased communicating with us about her accommodations. Moreover, she was suffering from full-blown PTSD.

9. The district did not conduct a thorough investigation as Mr. English claimed. For example, it hid the fact that the teachers slept in a remote location while entrusting our children to unscreened college students.

10. The district failed to tell you that on May 7, 2013 we volunteered to participate in the investigation but were not allowed. We included our May 7 letter in the correspondence. This would have unearthed the wealth of information the district faults us for not supplying. Why? Because to provide the information would have cast the district in a very bad light.

11. Why does the district ignore the wealth of medical information that says our daughter was raped but pretends she wasn't?

12. Rape or no rape (as some believe), no one can say our daughter accepted unwanted touching. Unwanted touching in itself is a feature of sexual harassment. We provided you with the definition of unwanted touching last week from the Office of Civil Rights publication entitled Sexual Harassment: It's Not Academic. There is no doubt that she met the definition of sexual harassment.

Directors should take the time to read the source materials and information from OSPI rather than accepting the advice of the legal team whose primary objective has always been mitigating liability, not accountability.

Sincerely,

[REDACTED]

--

[REDACTED]

— Attachments: —

school board appeal statement.docx	14.4 KB
school board statement Feb 25.docx	157 KB

February 21, 2014

Ms. Sharon Peaslee
President, Seattle Public Schools Board of Directors
2445 Third Ave South
P.O. Box 34165
Mail Stop 33-156
Seattle, WA 98124

Dear Ms. Peaslee:

We received a copy of the February 20, 2014 memo from Deputy General Counsel John Cerqui to the School Board.

In our February 4, 2014 letter to the School Board, we wrote that the determination from Assistant Superintendent of Operations Pegi McEvoy was insubstantial because it “arbitrarily devalued, discounted, and ignored objective information that we have supplied regarding the sexual assault on our daughter.” In response, Mr. Cerqui has now supplemented Ms. McEvoy’s report. However, Mr. Cerqui’s memo omits facts available from the documents we supplied, and introduces factual errors and dubious assumptions. We have commented on these below because we want the Directors to have an accurate understanding of our position.

In Mr. Cerqui’s memo, we read for the first time that the District has arbitrarily limited the scope of our complaint to a question of whether a sexual assault occurred. We object to this and urge the directors to consider our complaint in its entirety.

Sincerely,

□□□□□□□□□□

□□□□□□□□□□□□□□

Detailed Response

1.

The female student eventually named her assailant as the male student who had acknowledged he had sex with her.

Our daughter named the assailant the afternoon following the assault while she was at the hospital in Port Angeles. Later the same evening, the assailant told Garfield HS Principal Ted Howard that he had consensual sex with our daughter. This is documented in the National Park Service materials we supplied to the District.

2.

The District hired an independent investigator, Mr. Kaiser, to review the allegations and his Investigative Report was provided to the parents on June 28, 2013.

The District did not retain Mr. Kaiser until after we insisted that the District fulfil its Title IX obligations to conduct its own investigation. This is documented in our correspondence with General Counsel Ron English.

3.

The investigator found that the female student and her friend crawled out of the girls' cabin window and into the boys' cabin window, and had a conversation with the boys. After awhile the friend returned to her cabin and the female student remained.

The investigator also reported that two female students spent the night in the boys' cabin. The investigator does not report whether these two students had sex with any of the male students. The investigator also reported that a boy was found under a girl's bed.

4.

The parents seek a determination that the incident was a rape, that the chaperones failed to perform their duties, that the District failed to timely inform the parents of their rights under Title IX, failed to conduct a timely investigation, and that they are entitled to monetary damages.

In our complaint we did not ask the District to determine if our daughter was raped. She told us she was sexually assaulted. We believe her. We also believe the medical providers and therapists who treated her for sexual assault. We asked why sexual assault was allowed to occur on a Seattle Public Schools field trip. We have never received an answer nor an explanation why the teachers and chaperones failed to perform their duties in assuring the safety of our daughter and other students on the field trip.

5.

Superintendent Procedure 3208SP covers the allegation of sexual harassment, but not the other issues the parents seek to raise. All of the other issues are not before the School Board.

We object to the District arbitrarily restricting the scope of our complaint. Negligent chaperoning is an integral part of our grievance because it created an uncontrolled and unsafe environment in which sexual harassment and sexual violence could and did occur. The District's investigator uncovered inadequate adult supervision and failures by the teachers and administrators to adhere to the District's own field trip policies. We detailed these at length in our October 18 report and again in our February 4 letter to the School Board. Now the District instructs the Board to ignore these findings of its own investigator. We would not be having this discussion had the teachers and chaperones ensured the safety of our daughter and the other students on the field trip.

Failure to extend Title IX rights to our daughter is another central part of our complaint. Title IX guidelines must be followed whenever there is a report of sexual harassment or sexual violence. These guidelines ensure all complaints of sexual harassment are handled promptly and fairly. They apply not only to our daughter's case but to all Seattle School District children. The District has never addressed our questions about why it did not comply with the federal Title IX directives when our daughter reported a sexual assault. Now the District summarily directs the Board to ignore this important part of our grievance.

6.

In October 2013 the parents submitted a handwritten, undated, unsigned statement covering part of a spiral bound page, stating facts indicating the incident was not consensual. The parents have submitted a statement that this was written by their daughter at some date prior to April 2013 as part of her therapy. [Note: This was not provided to the District until six months after the parents allegedly received it, even though they were in frequent contact with the District during that period. The excerpt appears to be only a portion of the journal, and describes only a portion of the incident. The parents have not provided the remainder. This suggests there may be different information in the remainder of the document.]

Mr. Cerqui attempts to discredit our daughter's account, even though none of the investigating authorities have stated they had any reason to disbelieve her. He hypothesizes that there might be additional information in our daughter's journal that bears on the sexual assault, but does not say what reason he has to think so. In fact, our daughter's journal contains entries from other therapy exercises, none of which are relevant to the sexual assault. We asked to participate in the District's investigation in May 2013, but our request was denied. So we provided our daughter's therapy exercise along with all relevant documents in our October 2013 response.

7.

The partial medical records provided by the parents indicate she is suffering from PTSD.

The medical records also indicate that our daughter's PTSD is the result of a sexual assault. Why does the District ignore this fact?

8.

The male student admits that she used a code “safe” word more than once, telling him to stop the sexual touching, but he believed he then persuaded her to allow him to continue.

This is a remarkable statement. Does the District believe that it is up to the perpetrator to decide if he had persuaded our daughter to continue touching her after she repeatedly told him to stop? As representatives of district parents, does the School Board agree with this?

We also note that the District obtained this information from the NPS report we provided, and not from what the assailant told the District investigator, Mr. Kaiser six months later. In the latter interview, the assailant never mentioned that our daughter used a safe word—another example that calls into question the veracity of the information that assailant gave to Mr. Kaiser. The information we provided, upon which the District relies, verifies that our daughter told the assailant to stop, as she wrote in her account.

9.

It is clear that the male and female students consented to some sexual touching. Both the girl and the boy agree that they established an agreed “safe word”, indicating they intended that consensual sexual touching would occur.

It is **not** at all clear that our daughter consented to any sexual touching. Why does the District presume that our daughter knew she was consenting to a sexual game? However, it is clear that our daughter told the assailant to stop multiple times and that he ignored her. Moreover the District disregards the screenshots we provided of the assailant’s Facebook posting endorsing duping girls to have sex and “f--g them like animals.”

The District has defined sexual harassment as “unwelcome conduct or communication that is sexual in nature.” (WAC 392-190-056 and School District Policy 3208SP). In its publication “[Sexual Harassment: It's Not Academic](#)” the US Department of Education Office for Civil Rights (OCR) explains “unwelcome conduct” as follows:

“Conduct is considered unwelcome if the student did not request or invite it and considered the conduct to be undesirable or offensive. The age of the student, the nature of the conduct, and other relevant factors affect whether a student was capable of welcoming the sexual conduct. A student’s submission to the conduct or failure to complain does not always mean that the conduct was welcome.

“Example 1: A middle school student makes offensive sexual jokes to another student, but the student does not object to the jokes or speak out against them. The student’s failure to object does not mean that he or she has welcomed the comments.

“Example 2: A female high school student willingly kisses a male student on one occasion. When the student subsequently attempts to kiss her again, she objects, but he kisses her anyway. This subsequent kiss is considered to be unwelcome despite the welcomeness of the first kiss.”

10.

The District investigator found that the female student first described the incident the next morning as occurring in the female student's own bed, contradicting the parents' current position. The FBI investigator who interviewed the female student stated to the District that she told conflicting stories of what happened, at first claiming that she had been forcibly held down and raped in her own bed in the girls' cabin by an unknown individual, and didn't want to tell anyone (two other girls ultimately reported the girl's allegation to the teacher), and later admitted she had voluntarily gone to the male student's cabin. According to the FBI investigator's statement to the District, the student admitted she had "fibbed".

Our daughter explained that she changed her story because she initially didn't want to get the perpetrator in trouble. This has already been documented in the NPS report and medical records we provided the District. The NPS reports stated that our daughter went to the boys' cabin to listen to the assailant's problems. Our daughter voluntarily gave the FBI a second interview in January 2013 to explain why she changed her story.

11.

The parents have refused to make their daughter available to be interviewed by the District's investigator, thus there has never been any opportunity to obtain details of her story or to assess her veracity in the face of conflicting testimony by others.

The District does not mention that it had an opportunity to interview our daughter in the months prior to her attending the residential treatment program on February 24, 2013. In fact, the District never asked us if it could interview our daughter until after we raised our March 18, 2013 complaint. The District is obligated to conduct its own timely investigation, according to [OCR directives](#) we have repeatedly quoted:

"Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct."

"Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime."

12.

The FBI provided these documents to the parents, but declined the District's request for them. Thus we have no knowledge regarding the withheld materials. The fact that the parents chose to provide only this limited portion, and withheld the other eight pages, plus all of the initial report, suggests that the withheld materials may not support their position.

First, the NPS provided us with these documents, not the FBI. Second, Mr. Cerqui conjectures that we are withholding materials that contradict our daughter's account. The NPS report did not include our daughter's interview with the FBI. We submitted a FOIA request to the FBI to obtain their report of that interview. However, the FBI response to our request did not include that report. What we did receive from the FBI was redacted to the extent that it provided virtually no information. Rather than conjecturing about a few missing pages, Mr. Cerqui should focus on the accounts of the assailant, his friend who agreed to cover for the assailant, and the information that contradicts the District's belated investigation.

13.

The parents also have refused to provide the female student's complete journal description of the event, suggesting the withheld materials may not confirm their current version of the facts. Only a portion of a single page is provided. By withholding these materials until after the District had completed its interviews of all of the other witnesses, the parents have hampered the District's investigation.

Why does Mr. Cerqui assert that we did not provide our daughter's complete journal description of the assault? There was only one page; why does he conclude there is more than this?

We didn't hamper Mr. Kaiser's investigation. We are the ones who insisted that the District conduct an independent investigation in the first place after it failed to do so. Moreover we offered to participate in the investigation in May 2013 and to pose questions that would have elicited the information the District says we hampered. No one responded to our offer.

The District invited us to comment on and provide additional information to Mr. Kaiser's draft report. We did so at length in our October 18 communication. The District failed to comment on the information we provided or seek any necessary clarification. We assumed this information would be incorporated into Mr. Kaiser's final report. But the final report never materialized because the District abruptly terminated Mr. Kaiser's investigation.

14.

Neither the handwritten journal report nor the partial, redacted excerpts from the federal investigators' reports would be admissible in any formal proceeding because the District has not been given a chance to examine the full documents or to interview the author or the persons quoted.

The District had every opportunity to interview our daughter in the three months she resided in Seattle after the assault. Moreover, the District could have contacted the NPS investigators if it wished to interview them. The District made no effort to do so.

Furthermore the admissibility of this journal report to a court proceeding is irrelevant to the administrative review before the School Board. The plain fact is that the District is trying to shift the onus for its failure to conduct a prompt and equitable investigation onto the victim's family. It has never been our responsibility to exercise due diligence for the Seattle School District, as OSPI confirmed when they explained the District's responsibilities. We have insisted on the District conducting a prompt and impartial investigation so that other district families would not have to suffer the same devastation that we have.

15.

After interviewing everyone involved, including the female student, the federal investigators' information was turned over to the US Attorney, who decided not to file charges. This supports the conclusion that there is insufficient evidence to support a determination that a rape occurred.

As we pointed out in our February 4 letter, the NPS and FBI investigators came to no such conclusion, nor did the US Attorney's Office. We cited the correspondence from the NPS Chief Ranger Colin Smith saying so. Furthermore, that fact that the US Attorney's Office declined to prosecute a criminal case has no bearing on a determination of sexual harassment. We quote again from the [OCR guidelines](#):

"Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably."

Conclusion

Even now, more than a year since the sexual assault, the School District continues to dodge its responsibility for the events of November 7, 2012, and the aftermath that has shattered our family. Unless the District is held accountable, we fear more families will suffer the same devastation.

MEMORANDUM



To: School Board
From: John Cerqui, Deputy General Counsel *John Cerqui*
Re: Appeal of Superintendent Decision Regarding Alleged Sexual Harassment
Date: February 20, 2014

This memorandum summarizes the facts and provides an analysis for an appeal to the School Board pursuant to Seattle School District ("District") Superintendent Procedure 3208SP, which is based on Washington Administrative Code (WAC 392-190).

Brief Summary of Facts

This appeal stems from a Garfield High School field trip to Nature Bridge in Olympic National Park from Monday, November 5 through Wednesday, November 7, 2012. A total of 27 students participated, with three chaperones and two teachers. On Wednesday morning, November 7, a female student reported that she had been raped by an unknown assailant. The female student was interviewed by a Park Service Ranger. She was thereafter taken by a District staff member to a local medical center to receive medical attention. Additional details on the events are contained in the Investigative Report prepared by a District investigator, Richard Kaiser, dated June 28, 2013. See Attachment A.

According to the Investigative Report, a male student who was on the field trip acknowledged having sex with the female student, but indicated that it was consensual sex. The male student was emergency excluded from the school. The incident was investigated by the FBI and National Parks personnel, but the federal prosecutor did not file charges. The male student was permitted back into school after two weeks.

The female student eventually named her assailant as the male student who had acknowledged he had sex with her. The female student's parents requested that she be allowed to finish her first semester course work late, and be permitted to transfer to another school. Both requests were granted, but the female student never started classes at the new District school and has never returned to Seattle Public Schools. The District later learned that the female student went to a residential facility in another state.

On March 22, 2013, four months after the incident, the District received a letter from the female student's parents asserting their daughter had been raped, that chaperoning was inadequate, that the District had not conducted a timely investigation and had not provided sufficient accommodations for their daughter. The District hired an independent investigator, Mr. Kaiser, to review the allegations and his Investigative Report was provided to the parents on June 28, 2013.

Mr. Kaiser interviewed three teachers, a school counselor, four students, and two volunteer chaperones, including the alleged assailant, his roommate, and a friend of the female student. He attempted to obtain the FBI's and Park Services investigative reports and complete copies

of the female student's medical records, but these requests were denied.¹ He also attempted, but was denied an opportunity, to interview the female student.² He also attempted, but was denied an opportunity, to interview the investigating FBI agent.³ The investigator found that the female student and her friend crawled out of the girls' cabin window and into the boys' cabin window, and had a conversation with the boys. After awhile the friend returned to her cabin and the female student remained. The female student crawled into the male student's bed.

The parents asked for time to submit additional materials. This was granted, as well as an extension. On October 18, 2013, five months after the investigation, the parents submitted additional materials.⁴

These materials were reviewed by Assistant Superintendent of Operations Pegi McEvoy, who provided a report to the Superintendent on the question of whether the incident violated the District's Sexual Harassment Policy and Procedure, i.e., was the incident a sexual assault. She concluded that there was insufficient information to determine whether the incident was consensual or not. This determination was confirmed by the Superintendent in a letter to the parents on January 23, 2014. See Attachment B.

The parents have appealed the determination to the School Board pursuant to Superintendent Procedure 3208SP.

Relief Sought

The parents seek a determination that the incident was a rape, that the chaperones failed to perform their duties, that the District failed to timely inform the parents of their rights under Title IX, failed to conduct a timely investigation, and that they are entitled to monetary damages. The parents have also filed complaints with the District against several District employees, the male student and the volunteer chaperones as a result of this incident.

Scope of Appeal

¹ The District also made Freedom of Information Act requests to both the FBI and National Park Service, but the requests were denied. The District also requested the materials from the parent, but they declined. The parents have since provided limited portions of several documents to the District. These documents are heavily redacted. Without complete documents it is not possible to determine their significance.

² The District also made multiple requests to the parents for the female student to be interviewed by the investigator, all of which were rejected.

³ However, the agent did speak with the District General Counsel, and reported that the female student gave conflicting stories as to whether the incident occurred in her own bed in the girls' cabin or in the boys' cabin, and at first asserted she did not know the assailant, before later naming him.

⁴ The parents have also submitted a complaint against the following individuals pursuant to Board Policy 4220: the male student, the teachers, volunteer chaperones, assistant principal, principal, counselor, Section 504 Coordinator, General Counsel, the Assistant Superintendent of Human Resources, Superintendent and School Board. That complaint is being investigated under the supervision of the Assistant Superintendents of Teaching and Learning and Human Resources. The Assistant Superintendent will make the decision on any discipline of employees reporting to the Assistant Superintendent of Teaching and Learning. The final decision on employees not reporting to the Assistant Superintendent of Teaching and Learning will be made by the Superintendent.

Superintendent Procedure 3208SP covers the allegation of sexual harassment, but not the other issues the parents seek to raise. All of the other issues are not before the School Board.

The parents' complaints against various employees are covered by School Board Policy 4220 and are not subject to the appeal requested by the parents.

Accordingly, this memorandum will not address any issue except the question of whether the female student has sexually harassed, i.e., sexually assaulted.

Discussion

1. Summary of Information Suggesting an Assault May Have Occurred

The morning after the incident, the female student asserted that she had been raped. While she told conflicting accounts of the incident, the excerpts of medical reports received to date show she was distressed by what happened. The selected excerpts of the medical reports provided by the parents in October 2013 indicate vaginal and anal trauma and the presence of semen.

In October 2013 the parents submitted a handwritten, undated, unsigned statement covering part of a spiral bound page, stating facts indicating the incident was not consensual. The parents have submitted a statement that this was written by their daughter at some date prior to April 2013 as part of her therapy. [Note: This was not provided to the District until six months after the parents allegedly received it, even though they were in frequent contact with the District during that period. The excerpt appears to be only a portion of the journal, and describes only a portion of the incident. The parents have not provided the remainder. This suggests there may be different information in the remainder of the document.]

The partial medical records provided by the parents indicate she is suffering from PTSD.

The male student admits that she used a code "safe" word more than once, telling him to stop the sexual touching, but he believed he then persuaded her to allow him to continue.

2. Summary of Information Suggesting an Assault May Not Have Occurred

Two female students (students 4 and 5 in the investigator's report) stated that the female student left the girls' cabin to visit the male student on both the first and second nights.

All four students (the male student, the female student, his roommate and a friend of hers who was initially with her) agree that on the second night the female student went to boy's room after hours. Two female students confirm the female student crawled out of the girls' window and into the window of the boys' cabin. Another female student joined the female student and the male student (and another female and male student) and they talked. The other students state that the female student voluntarily climbed into his bed, and that the male student joined her. At this point two students left the room and a third went to sleep.

It is clear that the male and female students consented to some sexual touching. Both the girl and the boy agree that they established an agreed "safe word", indicating they intended that consensual sexual touching would occur.

Another male student reports he entered the room and climbed into his own bed. This student confirms the male student's description, stating that they had what sounded to him like consensual sex. He asserts that the female student moaned, describing it as a "pleasure moan, not a pain, a scream, or a yelp."

The District investigator found that the female student first described the incident the next morning as occurring in the female student's own bed, contradicting the parents' current position. The FBI investigator who interviewed the female student stated to the District that she told conflicting stories of what happened, at first claiming that she had been forcibly held down and raped in her own bed in the girls' cabin by an unknown individual, and didn't want to tell anyone (two other girls ultimately reported the girl's allegation to the teacher), and later admitted she had voluntarily gone to the male student's cabin. According to the FBI investigator's statement to the District, the student admitted she had "fibbed".

The parents have refused to make their daughter available to be interviewed by the District's investigator, thus there has never been any opportunity to obtain details of her story or to assess her veracity in the face of conflicting testimony by others.

In support of their assertion that the incident was not consensual, the parents have provided a portion of a single page of a nine-page "supplemental report" by the FBI. The excerpt is heavily redacted and it is difficult to tell who is saying what. The FBI provided these documents to the parents, but declined the District's request for them. Thus we have no knowledge regarding the withheld materials. The fact that the parents chose to provide only this limited portion, and withheld the other eight pages, plus all of the initial report, suggests that the withheld materials may not support their position.

The parents also have refused to provide the female student's complete journal description of the event, suggesting the withheld materials may not confirm their current version of the facts. Only a portion of a single page is provided. By withholding these materials until after the District had completed its interviews of all of the other witnesses, the parents have hampered the District's investigation. The handwritten report was allegedly written before April 2013, but was never provided to District until October 2013, even though the parents corresponded with the District throughout the summer and fall.

Neither the handwritten journal report nor the partial, redacted excerpts from the federal investigators' reports would be admissible in any formal proceeding because the District has not been given a chance to examine the full documents or to interview the author or the persons quoted.

After interviewing everyone involved, including the female student, the federal investigators' information was turned over to the US Attorney, who decided not to file charges. This

supports the conclusion that there is insufficient evidence to support a determination that a rape occurred.

Conclusion

The District investigated this incident and does not have sufficient information to conclude that a sexual assault took place. The District does not have the federal investigators' complete reports or the complete medical records, and has never been allowed to interview the female student. What facts are available are either inconclusive or tend to support the male student's position on the issue of whether the male student assaulted the female student. In addition, the FBI and U.S. Attorney's Office had the cooperation of the female student and did not file criminal charges against the male student.

Under these circumstances, the Superintendent's decision should be affirmed. The District simply cannot determine based on sufficient evidence that a sexual assault occurred.

Attachments:

- Investigative Report
- Superintendent Decision letter, dated January 23, 2013, and attached report by Assistant Superintendent Pegi McEvoy.

February 4, 2014

Ms. Sharon Peaslee
 President, Seattle Public Schools Board of Directors
 2445 Third Ave South
 P.O. Box 34165
 Mail Stop 33-156
 Seattle, WA 98124

Dear Ms. Peaslee:

We received the January 23, 2014 response from the Seattle School District to our complaint dated March 18, 2013. The District's response fails to address the points of our March 18 complaint and the specific questions we raised in our October 18, 2013 response to the District's draft investigative report.

As we explain in more detail below, the District has provided us with a vaguely worded and nonsubstantive reply to the detailed questions we raised ten months ago. In its response, the District has arbitrarily devalued, discounted, and ignored objective information that we have supplied regarding the sexual assault on our daughter that occurred on the school sponsored field trip in November, 2012, and its aftermath. Moreover, the District has not addressed our grievance regarding its failure to comply with US Department of Education Office for Civil Rights directives on responding to complaints of sexual harassment and sexual violence. Specifically, the District has not conducted a prompt, thorough, and impartial inquiry.

We therefore submit this appeal to the Seattle Public School Board of Directors. We ask the Board to direct the District to provide the remedies we have repeatedly asked for.

Sincerely,

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Detailed Response

We wish to point out particular inadequacies and shortcomings within the Memorandum to Superintendent Banda from Pegi McEvoy, Assistant Superintendent for Operations, dated January 21, 2014. In the following we refer to the content and supporting documents that we supplied to the District in our October 18, 2013 letter.

1.

On March 22, 2013, the Seattle School District received a formal, written complaint from [REDACTED] and [REDACTED], in compliance with Washington Administrative Code ("WAC") 392.190-065 and Seattle Public Schools Superintendent Procedure 3208SP ("Policy 3208SP").

Ten months have passed since our original complaint and we are just now receiving the Superintendent's response. WAC 392-190-065 further states:

"The district superintendent must respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days following receipt of such complaint by the school district, unless otherwise agreed to by the complainant."

Why didn't the District comply with the complaint procedure and timeline as set forth in this statute?

As we explained in our October 18 letter, the School District failed to abide by state and federal civil rights laws, specifically Title IX of the US Education Amendments of 1972 ("Title IX"). We quoted Calandra Sechrist from the OSPI Civil Rights office, who wrote:

"Under these laws, if a school district knows or should have known about possible sexual harassment of students (including sexual violence), it must take prompt and appropriate action to investigate and determine what happened."

Additionally, we cited the US Department of Education Office for Civil Rights (OCR) directives, which state:

"Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation."

Our daughter reported a sexual assault on a school trip well over a year ago. The District was aware of the reported assault the day it occurred. It now presents its determination. This does not constitute a prompt response required by OCR directives.

Why didn't the District comply with OCR directives to conduct a prompt investigation of the assault on our daughter?

2.

Among other material, I have reviewed their complaint, applicable policies and procedures, investigator Richard H. Kaiser's report of his investigation, dated July 5, 2013, and the parents' responses to Mr. Kaiser's report, including several emails and attachments from them.

We are not able to determine from this statement whether the District read and fairly considered **all** of the documents we supplied with our October 18 report. Specifically, the District's response conspicuously omits any mention of the medical records we submitted on October 18 that pertain to the sexual assault. Because the District's response does not refer to these medical records, we do not know if they were reviewed, or if they were, how they contributed to the District's conclusions.

Did the District review the medical records we supplied, and if so, why did the district not mention them in its determination?

3.

The male student described a consensual sexual encounter, and other students have supported that description of events.

According to what we read in the National Park Service (NPS) report and the draft report by the District's investigator, Mr. Kaiser, only one student, a longtime friend of the assailant, claims to have witnessed the sexual encounter. No other students corroborated his account. In our report of October 18, we pointed out several inconsistencies that call into question the believability of this account:

A. The assailant and his friend did not agree on whether the friend was in the assailant's room at the time of the sexual assault. From the District's draft investigative report by Mr. Kaiser:

"Student 3 [the purported eyewitness] and Student 2 [the assailant] provided contradictory accounts of the ensuing events, which related to whether Student 3 was present during the alleged rape and what Student 1 [our daughter] allegedly said about it."

"During this investigation, Student 2 told me that he did not remember Student 3 returning to the room."

B. The supposed eyewitness claims that after the sexual encounter, the assailant left his room to use the bathroom, and during the assailant's absence, he spoke with our daughter until the assailant returned. Neither the assailant nor our daughter stated that the assailant left his room at any time while our daughter was there. Moreover, our daughter told us she never spoke to anyone else at the time of the assault.

C. In his testimony to the NPS investigators, which we supplied to the District, the supposed eyewitness described the girl he saw in the assailant's cabin that night as having

“short black hair.” Our daughter had long brown hair at the time of the field trip. He described the girl he saw wearing clothing other than that what our daughter was wearing at the time.

Why does the District’s response ignore the evidence we presented that calls into question the believability of the so-called eyewitness?

4.

None of their daughter’s fellow students or any adults present during the field trip provided information indicating any unwelcome sexual touching occurred between their daughter and the male student.

This statement is disingenuous at best. The morning of the assault, our daughter told her fellow students that she had been raped and was bleeding. Her friends described our daughter as being distraught. Our daughter also informed the science teacher, Ms. Snookal, of the rape. Ms. Snookal described our daughter in tears. Ms. Snookal called to inform us that our daughter had been sexually assaulted. All of this is detailed in District’s own draft investigative report by Mr. Kaiser, as well as the NPS report we provided to the District.

As we pointed out in our October 18 report, in the immediate aftershock of the rape our daughter was initially reluctant to name the assailant. This is documented in both the medical records we provided and in the NPS investigator’s report. The morning of the assault, she did identify the assailant at the Port Angeles hospital where she submitted the rape kit.

How does the fact that our daughter did not immediately name her assailant to field trip participants give credence to the conclusion that there was no “unwelcome sexual touching” between our daughter and the assailant?

5.

The parents have expressed concerns that the male student’s credibility may be questionable given his interests in avoiding self-incrimination, but the fact that other students have provided some support for his description of events lends credibility to his description.

Not only did we express concerns about the assailant’s credibility, we provided the District with objective evidence that the assailant falsified his account to the NPS investigators. In our October 18 letter we documented the following:

“(NPS Report) When asked if he ejaculated, [the assailant] stated that he did not ejaculate, and that he was positive he did not ejaculate and was not close to ejaculating. When asked if they used a condom, [the assailant] stated that it was spur of the moment and that the condom he had was broken.

“(Doctor’s exam report from Olympic Medical Center, Port Angeles, 11/7/12) Wood lamp exam is positive for semen on the pubic hair bilaterally, and some streaking down to both sides of the rectum.”

Why does the District state that the information provided by the assailant's friends gives the assailant's story credibility while at the same time it ignores the objective evidence we supplied that calls that same credibility into question?

6.

Based on Mr. Kaiser's interviews of the other students present during the events in question, it appears that their daughter may have consented to some or all of the male student's conduct.

As mentioned in Section 3 above, only one student, a longtime friend of the assailant, claims to have observed a consensual sexual encounter between the perpetrator and our daughter. His account contradicted the assailant's story and wasn't corroborated by anyone else. We explained why the evidence available to the District in our October 18 report calls into question the reliability of this purported eyewitness. Why does the District ignore this?

Moreover, in our October 18 report we gave the District evidence, including our daughter's account, documenting that the assailant's sexual conduct toward our daughter was indeed unwanted:

- In the emergency room medical records we provided, the examining physician's notes state:

"The patient stated that 'he pulled down my pants and raped me.' The patient says, 'He hurt me.' She also says that he pushed his penis in her anus and that it hurt. She says that this whole thing took about 10 minutes.

"Later in the evening, in attempting to elucidate the nature of the sexual abuse, I asked her again, and she described both penile-vaginal and then penile-rectal penetration. She says, 'He went in dry, and it hurt.'"
- Although his statement to the NPS investigator contradicts our daughter's account and what he told the District's independent investigator, Mr. Kaiser, months later, the assailant admits that our daughter continued touching our daughter after she told him the code word that meant stop on three occasions. After each time she told him to stop, he continued with more intrusive actions.
- Even Mr. Kaiser was skeptical of the assailant's claim that the sexual activity was welcome by our daughter. In his report, Mr. Kaiser writes:

"I told Student 2 [the assailant] that his rationale was not especially convincing. I asked him if Student 1 [our daughter] said anything during the incident. Student 2 answered, 'I did not pay attention to her that much. She did not do anything to give me the impression that she did not want it.'" I then asked Student 2 how many times he had previously had any kind of sexual intercourse. He answered that he had it thirteen times. I also asked Student 2 if any other girl/female had acted this way. Student 2 answered that none had. I then asked Student 2 if he had ever had penile-anal intercourse with any girl/woman. Student 2 said he had asked others and they all said No.

7.

I also am aware that, although law enforcement investigated this incident, those authorities apparently decided there was no probable cause to believe the male student committed any crime, including any unwelcome touching of their daughter.

The District surmises that the authorities “apparently decided” there was “no probable cause” of criminal activity but doesn’t explain how it arrived at this conclusion. At no time in our discussions with the NPS and FBI investigators did we hear any mention of “probable cause.” When we spoke with NPS Chief Ranger Colin Smith on January 28, 2013, he told us that the NPS and FBI investigators had come to no conclusion as to whether a rape occurred or not. He further informed us that the US District Attorney’s Office had declined to prosecute a criminal case against the assailant, but did not mention “no probable cause” as the basis nor that it had reason to doubt our daughter’s account. In an email to us dated September 27, 2013, Mr. Smith wrote:

“The US Attorney has not determined that no sexual assault occurred.”

In what way is the District’s supposition relevant to its determination of whether the assailant’s actions met the standard of sexual harassment as defined in WAC 392-190-056(1), or E-215 (sexual assault) of the code of prohibited behaviors in the District’s own Student Rights and Responsibilities? In our October 18 report we informed the District of the OCR position on this issue:

“Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.”

The District speculates that the authorities had “no probable cause to believe the male student committed any crime” even though this has no bearing on our sexual harassment/sexual violence complaint, according to the OCR guidance we quoted. What place does the District’s “no probable cause” assumption have in a fair and impartial evaluation of our complaint?

In addition, the District ignores the documentation we provided October 18 from the Washington State Department of Labor & Industries Crime Victims Program. In consultation with the Clallam County Prosecutor’s Office, the crime victims program accepted our daughter and paid provider medical claims on her behalf. The program’s eligibility requirements, posted on the department’s [web site](#), include:

“Sustain bodily injury or severe emotional stress resulting from a crime.”

Why does the District disregard this information?

8.

Complicating matters is that their daughter was unavailable to discuss the incident with Mr. Kaiser, so the District has not received a description directly from her about what transpired during the field trip (the statement provided in October 2013 which the parents attributed to their daughter is undated and unsigned).

We wrote Mr. Kaiser and Mr. English several times explaining that, on advice of her therapists, our daughter was not available for interviews while she was receiving treatment at the residential treatment center in Utah in the aftermath of the sexual assault. The therapist told us that recounting the assault would likely trigger a trauma relapse.

In our October 18 report, we did provide the District with a photocopy of our daughter's handwritten journal description of the November 7, 2012 rape, which was a part of a particular therapy assignment, together with an explanation that she presented it to us at a family therapy session with her counselor, Jake Sparks. Our daughter did not sign or date her journal entry, but we have now provided the District with a letter from Mr. Sparks that attests that the journal entry is indeed our daughter's and was presented to us at the therapy session on April 19, 2013 at the residential treatment center in Utah.

The District has had our daughter's journal entry since October 18, 2013. If it had doubts about its authenticity, why did it not contact us before it made its January 2014 determination?

9.

In addition, we are aware that their daughter gave different descriptions of the event to different people.

Is the District also aware that the assailant "gave different descriptions of the event to different people?" It should be because in our October 18 report, we provided the District with a copy of the NPS report of its interview with the assailant on November 9, 2012. The reports showed the assailant gave different accounts to the NPS investigator, Garfield HS Principal Ted Howard, and to the District's investigator Mr. Kaiser.

Among other discrepancies, the assailant tells the NPS investigator about how he continued to sexually touch our daughter even after she used a code word to tell him to stop. But in his account to Mr. Kaiser, the assailant does not mention a code word or how many times it was used. The assailant tells Mr. Kaiser that our daughter initiated physical contact with him, but he tells the NPS investigator that he was the one who "started feeling on her." The assailant tells Mr. Howard that the assailant and our daughter "messed around" and "began to have consensual sexual intercourse, but stopped." But the assailant told the NPS investigator that he had vaginal and anal sex with our daughter. The assailant told Mr. Kaiser one version of a supposed conversation with our daughter during the sexual encounter that was different from what the assailant described to the NPS investigator.

We would also point out that due to the District's belated investigation, which began six months after the field trip, it is not surprising that the assailant would have changed his account from what he initially told the NPS investigators.

The District states that our daughter gave different descriptions of the sexual assault to different people but doesn't explain what details of the descriptions were different in these accounts. Why does the District fail to point out the detailed evidence we presented that the assailant provided multiple versions of his account?

10.

The parents have provided selected materials from interviews conducted near the time of the incident, but they are heavily redacted and the parents have provided only selected pages from law enforcement authorities.

Mr. English had previously asked us to turn over to the District our copies of the investigators' report and our daughter's medical records. We told Mr. English of our concerns about giving the District privacy-protected documents. Mr. English informed us that the District was not able to obtain the investigation report from the authorities, so we did provide the District's investigator, Mr. Kaiser, some of the records to assist in his investigation, while still protecting our daughter's privacy. The NPS has redacted the names of minors (except our daughter's) from our copy of the report, but the content is not otherwise redacted and the interviewees are easily identifiable by context.

11.

While it is clear something occurred on November 7, 2012 that resulted in distress to their daughter, it is difficult to determine from the material from the investigator and provided by the parents whether any distress experienced by their daughter was necessarily caused by a nonconsensual sexual encounter, or other stressors.

The District says that "something" occurred the night of the assault that "resulted in distress" to our daughter, but it contends that it cannot determine whether our daughter's trauma was caused by a "nonconsensual sexual encounter" or by hypothetical and unspecified "other stressors." Did the District read the medical records we provided on October 18? Those records are objective evidence from medical providers that connect our daughter's trauma to the sexual assault, and not to any other cause. The evidence we supplied included:

- A letter from rape victims' advocate Rebecca Korby, who was present with our daughter in the emergency room at the Olympic Medical Center in Port Angeles the day of the assault. Ms. Korby tells us that she has been a rape victims' advocate for over ten years and that she has counseled "well over 200" rape victims in her career. In Ms. Korby's letter, she states that our daughter:

"told me she had been raped and she also presented as one who experienced a rape and was distressed in her demeanor. Ms. [REDACTED] was clear in her recollection of the assault and throughout the course of the two hours I spent with her it was clear she was becoming increasingly distressed."

- A letter from Claudia Kirkland, the social worker at the Harborview Center for Sexual Assault and Traumatic Stress who counseled our daughter the week after the sexual assault. In this letter, Ms. Kirkland states that our daughter:

“Presented for treatment at Harborview Center for Sexual Assault and Traumatic Stress on November, 16, 2012, following a reported sexual assault while on school field trip. [She] reported intrusive thoughts, nightmares, sleep disruption, depressed mood, feeling overly emotional, avoidance, poor focus, and suicidal ideation without intent or identified plan. Her scores on the PTSD symptom scale met diagnostic criteria for PostTraumatic Stress Disorder. Her score on the Pediatric Symptom Checklist (PSC-17) was clinically significant for Internalizing problems.”

- An Initial Evaluation by Ms. Kirkland dated December 5, 2012 that states:

“Reason for Referral: Pt [patient] was SA’d [sexually assaulted] by a peer while on a school trip on the Kitsap peninsula.

“Current Symptoms: She tries not to think about SA [sexual assault] because "it makes me feel sick." She states that she will get headaches and stomach aches if she thinks about SA and "feel really depressed and claustrophobic." [She] reports decreased interest in activities and spending a lot of time at home. She states that she also feels detached from others because of what they might believe about what happened.”

- A Case Formulation Summary by Ms. Kirkland dated December 5, 2012 that states:

“This 15 yo [year old] Caucasian female referred by KCSARC [King County Sexual Assault Resource Center] for reported SA [sexual assault] by a peer while on a school trip on the Kitsap peninsula. [She] reports intrusive thoughts, nightmares, flashbacks, physical reexperiencing sx [symptoms], feeling upset when she thinks about SA, avoiding thoughts and feelings related to SA, avoiding reminders of SA, decreased interest in activities, sense of detachment from others, hopelessness, emotional numbing, sleep disturbance, and difficulty concentrating.”

If the District believes that our daughter’s trauma was caused by something other than a sexual assault that night, why doesn’t it explain what it was and why it was more likely to have caused trauma than the sexual assault stated in the medical records? If the District uses a “more likely than not” standard when deciding whether our daughter was sexually assaulted, why doesn’t it apply that same standard when ascertaining whether our daughter’s trauma was caused by the sexual assault or by some conjectured and unspecified “other stressor?”

12.

In summary, based on the information we have at this point, there is insufficient evidence to conclude that the sexual touching that occurred between their daughter and the male student was unwelcome at the time it occurred.

In Section 6 above we list some of the evidence we provided in our October 18 letter that shows that the sexual touching was unwanted when it occurred. The District does not tell us that it reviewed these particular points, or if it did why they determined that this evidence is insufficient.

The District would like us to believe, based on its review of all the evidence, the following: that after having consensual sex with the assailant our daughter told fellow students and adults present at NatureBridge that she had been raped, appeared distraught and traumatized to the students and adults who attempted to comfort her, and then went to the emergency room where she was medically evaluated for sexual assault, underwent an intrusive and unpleasant rape kit exam, endured a nauseating megadose regimen of prophylactic antibiotics, and thereafter commenced therapy at Harborview, where she was diagnosed with PTSD following a sexual assault—and that this scenario is entirely plausible and more likely than not the result of consensual sex.

13.

The parents have also expressed concerns about the quality of the chaperoning during this field trip. However, because we are unable to conclude whether their daughter was assaulted, there is no basis to conclude that any action or inaction by the chaperones was connected to the alleged sexual harassment.

The District's own investigator found much evidence of poor chaperoning and inadequate adult supervision on this field trip. We mentioned the following in our October 18 report:

- a. Male and female students co-mingled before and after curfew without supervision, in violation of the NatureBridge code of conduct, which the Garfield HS teachers and chaperones were required to enforce. This code of conduct forbids students from entering the cabin of the opposite sex, yet teachers permitted male and female students to enter each other's cabins before and after curfew.
- b. Female students left their cabin, using chairs beneath windows in some cases, and spent the night in a room in the boys' cabin. A boy was found hiding under a bed in the girls' cabin. Students reported texting to meet up after lights out. Chaperones did not prevent this from occurring.
- c. Chaperones admit they could not control students' comings and goings after curfew the first night but made no effort to rectify the situation the following evening, or enforce rules by administering consequences.
- d. Mr. Ward, the chaperone in charge of the male students, wore earplugs while he slept, diminishing his ability to effectively monitor of the post-curfew comings and goings of the 14 male students in his charge.
- e. The Garfield HS teachers slept with their small children in separate cabins (Honeysuckle and Summerie), which are at least 100 yards from the students' cabins and out of line of sight in the dark, and from which the teachers could not see or hear the students they were responsible for.

- f. Teachers and chaperones had not read the district's field trip procedures and were therefore not aware of their responsibilities therein.
- g. The District provided no evidence that two of the chaperones had read and signed the SPS Guidelines for Volunteer Field Trip Chaperones, and were therefore not aware of their responsibilities therein.
- h. According to the documents that the District provided us, teachers and Garfield HS administrators did not comply with the District's field trip policies.
- i. The school knew or should have known that because the assailant had a discipline record that included "lewd conduct" at school, he presented a risk of sexual harassment and lewd conduct in an under-supervised setting.
- j. Teachers did not set up a pre-trip informational meeting with parents during which teachers could inform parents of their children's sleeping arrangements (in adjacent unlocked cabins), chaperoning (one unscreened unauthorized male chaperone for 14 boys and absence of a night watch), and offer parents an opportunity to ask questions so as to evaluate the risks to their children and make informed decisions.

The District does not offer any information that contradicts these statements, or make any response to our claim that inadequate adult supervision created an uncontrolled and unsafe environment in which a sexual assault could occur. Moreover, Mr. English wrote us more than once that it is the District's position that sexual intercourse between students on field trips is not necessarily indicative of improper or inadequate chaperoning (he did not say whether this includes nonconsensual sexual intercourse). We asked past-Board President Kay Smith-Blum if the Board agreed with Mr. English's statement, but we never received a reply. If the Board agrees with this, it should inform all Seattle Public School parents that chaperones on school field trips do not necessarily prevent sexual activity, including nonconsensual sexual activity.

Conclusion

The District is obligated to immediately investigate all complaints of sexual harassment, including sexual violence on school field trips. OCR directs that:

"The school's inquiry must in all cases be prompt, thorough, and impartial."

The District has not conducted a prompt, thorough, and impartial investigation. Its determination is not timely, and as we have explained in detail above, does not present a fair review of all of the evidence. Furthermore, throughout this entire process, the District has remained silent about its failure to extend Title IX rights to our daughter.

The sexual assault occurred on November 7, 2012, and the District presented its conclusions on January 21, 2014, a span of over one year and two months. This is not a timely determination.

The District has been reluctant to carry out a prompt, thorough, and independent investigation, owing, we believe, to its fear of potential liability. When we asked about the District's investigation in our

March 18, 2013 complaint, Mr. English told us it was the District's practice not to investigate sexual assault incidents while there was an ongoing law enforcement investigation. When we informed the District of its obligations to conduct its own investigation without waiting for the conclusion of a law enforcement inquiries, it reversed itself and asserted it had conducted a substantive investigation in November, 2012, which consisted of a teacher observing a couple of interviews by law enforcement, but which did not include observing or participating in the FBI interviews with our daughter or the assailant. Yet the District did not even inform us of the findings of this so-called investigation until April, 2013, after we had escalated our initial complaint to OSPI. Once we explained to the district why this "investigation" was inadequate, it decided "after further consideration" to conduct its own independent investigation, beginning in May, 2013, six months after the assault. The District's independent investigator, Mr. Kaiser, issued a "draft report" dated June 28, 2013. The District asked us to review Mr. Kaiser's draft report and provide him with additional information if we chose to. We did so in our October 18, 2013 report, which included our daughter's statement, law enforcement and medical reports, and detailed commentary. However we never saw a final report from Mr. Kaiser containing his findings and conclusions. The District apparently pulled the plug on its own independent investigation and issued its determination without it.

Finally, none of this would be necessary had there been proper and adequate adult supervision during the November 2012 field trip during which our daughter was sexually assaulted. We wrote in our October 18 report:

"[Our daughter's] life has spun out of control ever since the sexual assault. Her high school education has been severely compromised. No one in the school district has been held accountable for this state of affairs, and the district appears to be entirely satisfied with this outcome."

January 23, 2014



RE: Your March 22, 2013 Complaint

Dear [REDACTED]

Attached is a report by the District's Assistant Superintendent of Operations, Pegi McEvoy, with respect to your complaint under Washington Administrative Code ("WAC") 392-190-065 and Seattle Public Schools Superintendent Procedure 3208SP ("Policy 3208SP"). For the reasons stated in her report and the investigative report, I adopt her conclusions, and determine there is insufficient evidence to conclude your daughter was the victim of harassment.

If you are not satisfied with this response to your complaint, you may appeal to the Seattle School District's Board of Directors. A written appeal must be filed by the 10th calendar day after you receive this letter by delivering your written appeal to me as the secretary of the School Board, or to the Board President, at 2445 Third Ave. South, PO Box 34165, Mail Stop 33-156, Seattle, WA 98124. These appellate procedures are set forth in WAC 392-190-065, 392-190-070, 393-190-075 and School Board Policy 3208SP.

Sincerely,

José Banda, Superintendent
Seattle School District

MEMORANDUM



To: Jose Banda, Superintendent
From: Pegi McEvoy, Assistant Superintendent for Operations
Re: Complaint of Sexual Harassment
Date: January 21, 2014

On March 22, 2013, the Seattle School District received a formal, written complaint from [REDACTED], in compliance with Washington Administrative Code ("WAC") 392-190-065 and Seattle Public Schools Superintendent Procedure 3208SP ("Policy 3208SP"). In summary, their complaint alleges that on or about November 7, 2012, their daughter (then a student enrolled at Garfield High School) was sexually assaulted by a male student during an overnight field trip to the Nature Bridge facility in the Olympic National Park. Among other material, I have reviewed their complaint, applicable policies and procedures, investigator Richard H. Kaiser's report of his investigation, dated July 5, 2013, and the parents' responses to Mr. Kaiser's report, including several emails and attachments from them.

WAC 392-190-056(1) and Policy 3208SP define "sexual harassment" in the context of students as (a) unwelcome conduct or communication that is sexual in nature and (b) that has the purpose or effect of substantially interfering with an individual's educational performance, or of creating an intimidating, hostile or offensive educational environment.

Based on my review of the material described above, I am unable to determine if their daughter was more likely than not sexually assaulted by the male student during the November 2012 field trip. The male student described a consensual sexual encounter, and other students have supported that description of events. The parents have expressed concerns that the male student's credibility may be questionable given his interests in avoiding self-incrimination, but the fact that other students have provided some support for his description of events lends credibility to his description. None of their daughter's fellow students or any adults present during the field trip provided information indicating any unwelcome sexual touching occurred between their daughter and the male student. Based on Mr. Kaiser's interviews of the other students present during the events in question, it appears that their daughter may have consented to some or all of the male student's conduct. I also am aware that, although law enforcement investigated this incident, those authorities apparently decided there was no probable cause to believe the male student committed any crime, including any unwelcome touching of their daughter.

Complicating matters is that their daughter was unavailable to discuss the incident with Mr. Kaiser, so the District has not received a description directly from her about what transpired during the field trip (the statement provided in October 2013 which the parents attributed to their daughter is undated and unsigned). Also, the Seattle School District requested, but did not receive, investigative material compiled by other entities shortly after this event was first reported. The parents have provided selected materials from interviews conducted near the time of the incident, but they are heavily redacted and the parents have provided only selected pages from law enforcement authorities. The District has been unable to obtain complete copies of those reports. In addition, we are aware that their daughter gave different descriptions of the event to different people. As a result, the material we have to review is not as complete as we would prefer.

While it is clear something occurred on November 7, 2012 that resulted in distress to their daughter, it is difficult to determine from the material from the investigator and provided by the parents whether any distress experienced by their daughter was necessarily caused by a nonconsensual sexual encounter, or other stressors.

In summary, based on the information we have at this point, there is insufficient evidence to conclude that the sexual touching that occurred between their daughter and the male student was unwelcome at the time it occurred.

The parents have expressed concerns about the school environment at Garfield after the event with her peers, including the male student, and consequent difficulty in their daughter returning to Garfield. The school district agreed to the parents' request to allow her to transfer to another school, Roosevelt. This would have resolved any concerns about the environment at Garfield. However, their daughter never began classes at Roosevelt.

The parents have also expressed concerns about the quality of the chaperoning during this field trip. However, because we are unable to conclude whether their daughter was assaulted, there is no basis to conclude that any action or inaction by the chaperones was connected to the alleged sexual harassment.

Under the School Board Policy, if the complainant is not satisfied with the response to the complaint, the complainant may appeal to the Board of Directors. A written appeal must be filed by the 10th calendar day after the complainant receives this letter by delivering a written appeal with the Superintendent as the secretary of the School Board, or with the Board President, at 2445 Third Ave. South, P.O. Box 34165, Mail Stop 33-156, Seattle, WA 98124. These appellate procedures are set forth in WAC 392-190-065, 392-190-070, 393-190-075 and School Board Policy 3208SP.

January 15, 2014

Sent by email and by US mail to Mr. Banda

Mr. José Banda
Superintendent, Seattle Public Schools
MS: 32-150
P.O. Box 34165
Seattle, WA 98124-1165

Superintendent Banda:

On October 18, 2013 we submitted our detailed response to the draft investigative report commissioned by the Seattle School District regarding the sexual assault on our daughter [REDACTED] that occurred on a Garfield HS field trip on November 6, 2012. You received a copy of that response, as did Seattle School District General Counsel Ron English.

Mr. English wrote us in an email message dated December 7, 2013 that we should expect a reply from the District before the winter holidays. We have not received the reply.

Therefore we are now sending a formal complaint. We summarize the main points below. Please refer to our original message of October 18 for the complete response and links to documentation.

Complaint

The District is obligated by federal and state law to protect its students against sexual harassment, including sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. This obligation extends to conduct in connection with any educational, extracurricular, athletic, or other programs sponsored by or operated by the District, including field trips. The District failed to extend this protection to our daughter, [REDACTED], during and after the Garfield HS field trip in November, 2012, when she was sexually assaulted by another student.

Specifically, we note the following:

1. On the Garfield HS field trip to NatureBridge in the Olympic National Park on November 5-7, 2012, there was negligent chaperoning and inadequate adult supervision, which violated the Seattle Public School and NatureBridge policies that teachers were to enforce, and which enabled male and female students to co-mingle unsupervised before and after curfew, thereby creating an uncontrolled and unsafe environment in which a sexual assault could and did occur.
 - a. Male and female students co-mingled before and after curfew without supervision, in violation of the NatureBridge code of conduct, which the Garfield HS teachers and chaperones were required to enforce. This code of conduct forbids students from entering the cabin of the opposite sex, yet teachers permitted male and female students to enter each other's cabins before and after curfew.

- b. Female students left their cabin, using chairs beneath windows in some cases, and spent the night in a room in the boys' cabin. A boy was found hiding under a bed in the girls' cabin. Students reported texting to meet up after lights out. Chaperones did not prevent this from occurring.
 - c. Chaperones admit they could not control students' comings and goings after curfew Monday night but made no effort to rectify the situation the following evening, or enforce rules by administering consequences.
 - d. Mr. Ward, the chaperone in charge of the male students, wore earplugs while he slept, diminishing his ability to effectively monitor of the post-curfew comings and goings of the 14 male students in his charge.
 - e. The Garfield HS teachers slept with their small children in separate cabins (Honeysuckle and Summerie), which are at least 100 yards from the students' cabins and out of line-of-sight in the dark, and from which the teachers could not see or hear the students they were responsible for.
 - f. Teachers and chaperones had not read the district's field trip procedures and were therefore not aware of their responsibilities therein.
 - g. The District provided no evidence that two of the chaperones had read and signed the SPS Guidelines for Volunteer Field Trip Chaperones, and were therefore not aware of their responsibilities therein.
 - h. According to the documents that the District provided us, teachers and Garfield HS administrators did not comply with the District's field trip policies. The teachers failed to complete all of the planning documents. The Garfield HS administration did not observe the required signoff dates, authorized the fieldtrip without a male chaperone, and endorsed that student permission forms had been turned in before they actually were. Two chaperones were added after Garfield HS administration had approved the trip. The female chaperone, Ms. Stromholt, and male chaperone, Mr. Ward, were not listed on the approved list of chaperones. They had not been properly screened, according to school district regulations, although they were responsible for the night-time supervision.
 - i. The school knew or should have known that because the assailant had a discipline record that included "lewd conduct" at school, he presented a risk of sexual harassment and lewd conduct in an under-supervised setting.
 - j. Teachers did not set up a pre-trip informational meeting with parents during which teachers could inform parents of their children's sleeping arrangements (in adjacent unlocked cabins), chaperoning (one male chaperone for 14 boys and absence of a night watch), and offer parents an opportunity to ask questions so as to evaluate the risks to their children and make informed decisions.
2. [REDACTED] was sexually assaulted November 7, 2012 on the field trip by her classmate identified as "Student 2" in the District's report.
- a. [REDACTED] was sexually assaulted as defined by Seattle School District Student Rights and Responsibilities.

- b. By his own description to Park Service and FBI investigators, the assailant states that he engaged in behavior that constitutes sexual assault according to the school district's definition, even though his statement contradicts ██████'s account and what he told the school investigator, Mr. Kaiser, months later. Even in his bogus story of consensual sex, the assailant admits that ██████ told him to stop three times.
 - c. ██████'s account of the sexual encounter with the assailant also describes behavior that constitutes sexual assault under the school district's definition, and second and third degree rape under Washington State Law (RCW 9A.44.060).
 - d. The description by the assailant of his sexual activity with ██████ as stated in District's report differs significantly from the description he originally gave to the Park Service and FBI investigators in November, 2012.
 - e. The assailant gave the Park Service and FBI investigators a falsified account to support his story of consensual sex, including a statement that contradicts forensic evidence.
 - f. The account of the so-called eyewitness, Student 3, is unreliable because it contains factual inaccuracies and statements not corroborated by either the assailant or ██████ (for example, the assailant did not recall whether Student 3 was in the room while ██████ was there, and neither the assailant nor ██████ stated that the assailant left his room to go to the bathroom while ██████ was there).
- 3. School personnel were aware of the sexual assault on ██████ the morning after it occurred.
 - a. ██████ informed the science teachers of the rape Wednesday morning, November 7. The science teacher alerted Garfield HS principal Ted Howard.
 - b. Other school district personnel were notified of the rape the same day.
- 4. ██████ was harmed as a result of the sexual assault.
 - a. ██████ was transported to the emergency room at Olympic Medical Center, Port Angeles on November, 7. She was accompanied by her science teacher Ms. Finley (not Ms. Snookal as stated in the District's Report). The school district was aware that ██████ received emergency room treatment after the sexual assault.
 - b. ██████ was in a distressed state in the emergency room and presented as someone who had been raped. This is documented in a letter from the victim's rape advocate at the Olympic Medical Center in Port Angeles.
 - c. The aftermath of the rape unhinged ██████ and cast our family into turmoil that continues to affect our lives in countless ways. In the days and months following the rape, ██████ saw medical providers and therapists who diagnosed her with PTSD and treated her as a result of this assault.
 - d. Physician and Mental Health Professional Diagnoses Codes appear on medical bills, chart notes, and/or discharge instructions. Diagnoses codes document an actual medical condition of PTSD.
- 5. The School District was aware that ██████ was harmed as a result of the assault.
 - a. The student intervention team (SIT) met on December 3, 2012 and created a 504 plan for ██████ based on a post-assault diagnosis of PTSD by ██████'s pediatrician.
 - b. The School District 504 Plan Coordinator states that ██████ qualifies for a 504 plan and did not require a 504 plan before the November sexual assault.

- c. The School District later pretended that it was not aware of any connection between the sexual assault on [REDACTED] and the diagnosis of PTSD by [REDACTED]'s pediatrician that was the medical basis for her 504 plan as drawn up by the SIT.
 - d. The district granted [REDACTED] a transfer to Roosevelt High School based on the Request for Assignments Related Accommodation (Form 504-11) that her parents submitted, and which gave the reason that [REDACTED] was raped on the field trip and that the assailant was still attending Garfield.
- 6. School District personnel botched and mismanaged accommodations for [REDACTED] post-assault.
 - a. Garfield HS and school district personnel provided contradictory and confusing information regarding the 504 accommodation for [REDACTED], and finally stopped communicating, frustrating our family's attempt to find the best education solution for [REDACTED].
 - b. A Student Intervention Team qualified [REDACTED] for a 504 accommodation in December, 2012. In April, 2013 the school district told us that it would assemble another SIT to determine [REDACTED]'s eligibility for 504 accommodation, too late to benefit her.
 - c. Garfield HS and school district personnel mismanaged arranging extensions to enable [REDACTED] to finish her fall semester work within the required six-week time frame. In April, the district belatedly granted [REDACTED] a useless extension after she was admitted to a Residential Treatment Center in February 2013 and no longer enrolled in the Seattle School District.
- 7. With respect to the sexual assault on [REDACTED], the School District violated state and federal civil rights laws, specifically Title IX of the US Education Amendments of 1972 ("Title IX").
 - a. The Seattle School District receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX.
 - b. Sexual harassment and sexual violence are forms of sexual discrimination prohibited by federal and state civil rights laws.
 - c. Title IX obligates school districts to take prompt and appropriate action to investigate all reports of sexual violence.
 - d. School districts are responsible for carrying out a prompt and equitable investigation of any report of sexual violence regardless of whether the student's parents have complained and regardless of whether the incident is under criminal investigation.
 - e. The School District violated [REDACTED]'s civil rights under Title IX because it failed to conduct a prompt and equitable investigation of the sexual assault on [REDACTED], and rationalized their refusal to do so because they were not aware that a federal investigation had been completed.
 - f. In mid-April 2013, more than five months after the sexual assault, OSPI notified the school district of its obligations under Title IX to conduct a prompt and equitable investigation of sexual violence occurring on a school field trip.
 - g. Upon learning of its Title IX obligations for the first time, the school district reversed itself and now claims that it did conduct an independent investigation.
 - h. The district's so-called independent investigation consisted of one teacher's second-hand report of a couple of interviews she observed. The teacher did not ask questions

nor could she act as an objective observer. The teacher did not witness the FBI interviews with [REDACTED] or with the assailant. Therefore the district's so-called investigation was neither equitable nor substantive. In addition the district never informed us of the findings of its so-called investigation until April 2013.

- i. The district emergency excluded the assailant from attending school for 10 days in November 2012. It did not inform us of this action when we asked immediately following the November assault but only five months later on April 16, 2013. On May 9, 2013 the district stated that it did not know why the assailant was emergency excluded.
- j. The school district denied [REDACTED] her civil rights under Title IX because the district failed to:
 - Notify us about whether the perpetrator was attending school, which affected our family's ability to make informed decisions about her educational options
 - Inform us how it planned to control a hostile environment at Garfield HS, thereby limiting [REDACTED]'s educational options
 - Explain to us [REDACTED]'s rights under Title IX
 - Conduct a prompt and equitable investigation
 - Reach out to provide resources to [REDACTED]
- k. In July 2013, eight months after the assault, the school district claims that it did indeed comply with Title IX regulations without providing any proof that it did so.

Remedy

In our complaint to the District dated March 18, 2013, we wrote:

No child—nor family—should have to endure the agony suffered over the last four months. No family should have to send their child off to a residential treatment center and suffer such a lengthy separation. The professionals associated with [REDACTED]'s care are shocked and outraged that [REDACTED] was subjected to this emotionally scarring episode on what was supposed to be a fun and educationally rewarding outing. Tragically, she now has to live with the aftermath of this sexual assault for the rest of her life. In sum, the rape has compromised [REDACTED]'s high school education and represents a serious setback to the college preparatory trajectory she had planned. This is a sad contrast to what she might have achieved at Garfield.

Because of the devastation to our family as a result of the sexual assault on the District field trip, we request the following remedies:


1. By February 15, 2014 the District must finalize its investigative report begun in May 2013 and address all of the findings in our October 18, 2013 response. In addition, this report shall explain to our family and the Seattle School Board the following:
 - a. Why the District allowed a sexual assault on [REDACTED] to occur on the Garfield HS sponsored field trip in November 2012.
 - b. Why the District failed to follow its own field trip policies and procedures, namely: it authorized a fieldtrip without a single male chaperone; it allowed

unscreened, unauthorized people to act as chaperones; it permitted teachers and chaperones to be in charge of our children without reading or implementing district protocols.

- c. What measures the District took and will take to hold individuals/staff/chaperones /the assailant accountable for the sexual assault on [REDACTED] during the Garfield HS sponsored field trip in November 2012.
 - d. What measures, if any, it has taken to prevent a reoccurrence of sexual assaults on school-sponsored field trips.
 - e. Why Mr. English, spokesperson for the Superintendent, School Board, and District, can state that sexual activity may occur on field trips in the context of appropriate chaperoning. If such policies are allowed, why hasn't the public been informed and consent documents amended accordingly?
 - f. What policies are in place to protect field trip participants from students previously emergency excluded for lewd conduct?
2. Mr. Banda must explain why he did not abide by the complaint procedure as described by WAC 392-190-065 regarding our March 18, 2013 complaint.
 3. The district shall compensate our family for all damages suffered by [REDACTED] and our family as a result of the sexual assault.

Sincerely,

[REDACTED]



TO: Ted Howard, principal Garfield HS; Nancy Coogan, Executive Director of Schools - Central Region;
José Banda, Superintendent Seattle Public Schools

It has now been four months since our daughter, [REDACTED], was sodomized and raped on a Garfield High School field trip to the Olympic National Forest. In the months since the assault, no one in the school district has come forward with an explanation of why a rape was allowed to occur on a school-sponsored field trip. And although the school district motto includes the phrase "everyone accountable" we are unaware of anyone being held accountable for this breach in our trust. No Garfield parent, nor any Seattle school parent for that matter, would permit their child to go on a field trip if they thought their child could possibly be allowed to be sexually assaulted by a classmate. The school district must hold itself accountable when such assaults are allowed to occur and take responsibility for the devastation caused by its failed policies.

Failure to responsibly assist our family

Instead, GHS and the school district have avoided assuming any responsibility for the life-scarring events of November 6. The perpetrator is free to continue his Garfield education uninterrupted, while our attempts to set [REDACTED]'s high-school education on track post-assault have been frustrated at every turn by the school administration's mismanagement and incompetence. We have documentation to substantiate the following examples, among many others:

Fallacious statements from principal and his deplorable lack of involvement. On November 8, Garfield principal Ted Howard told [REDACTED] that a student had come forward and "admitted having sex with [REDACTED]." A lengthy discussion ensued about obtaining a restraining order. The next day Mr. Howard denied that he had shared this fact with [REDACTED]. Instead he claimed that he had only said a student came forward with "information." According to the investigators' report, a student did indeed come forward to Mr. Howard and admit to having sex with [REDACTED]. Thus what Mr. Howard originally told [REDACTED] was true, just as [REDACTED]'s correspondence noted. When our daughter's principal dishonestly retracts what he told us, he has failed to meet the basic requirements we expect: honesty, integrity, transparency, reliability, and accountability.

Subsequent communications to Mr. Howard have been either ignored or forwarded on to an unknown person who does not respond. Mr. Howard also did not attend our first post-assault conference call with the school, even though it was scheduled well in advance for a time he said he could participate. Mr. Howard is principal of **all** Garfield students, including our daughter. His lack of transparency in his dealings with us has made it impossible to work collaboratively for the good of our child. Communications we initiated with Mr. Howard's supervisor, Nancy Coogan, have also been ignored or forwarded to another phantom person who never replies.

Contradictory information regarding accommodations. A plethora of contradictions and incomplete information from the district regarding accommodations for □□□□□ has rendered educational planning for a traumatized student impossible. First, Garfield drafted a 504 plan for □□□□□ with the knowledge that she might or might not return to Garfield. When we then asked for clarifications concerning the language, the plan was withdrawn, purportedly because □□□□□ was going to enroll at Roosevelt HS, even though correspondence shows the plan was crafted concurrently with other options under discussion. In the ensuing runaround, the Garfield counselor Ken Courtney and legal aid Carol Rusimovic told us that Roosevelt would now be responsible for drawing up a 504 plan, while Brandon Holst of the SPS Service Center wrote us that it was Garfield's responsibility. In another email to us, Ms. Rusimovic callously asks why □□□□□ needs any accommodation at all if she changes schools because she was doing well at Garfield before the assault. In this deeply telling email, Ms. Rusimovic utterly fails to acknowledge how trauma accompanies □□□□□ from one school to the next as she struggles to regain a modicum of stability. Although we replied to Ms. Rusimovic asking her what accommodations she could offer □□□□□ in a new school, we haven't received a reply in the ensuing two months. After making additional inquiries, Mr. Howard promised a written reply to *all* our questions, but no communication was ever received.

Thwarting □□□□□'s opportunities to achieve semester credit. Owing to the PTSD following the sexual assault, □□□□□ experienced a total loss of the concentration that would enable her to complete the schoolwork required to receive full credit for her classes. Much of this loss of focus was due to re-experiencing the rape in recurring nightmares, which prevented her from sleeping at night. Week after week, month after month, she struggled with exhaustion and frustration with her inability to function. Tutoring through Home Hospital was insufficient to overcome this reversal of □□□□□'s previous interest in academic work up to the time of the assault. We requested that Garfield extend □□□□□ the opportunity to make up incomplete academic work through the summer of 2013. Mr. Howard only indicated that we could ask for an extension; he would not assure us that it would be granted. *When a highly capable and once successful child has lost concentration owing to PTSD, we naturally needed to know whether her struggles to produce homework would be met with credit.* The district affords five weeks to make up an incomplete, but we received no notification that the incomplete was even granted, nor did we ever receive □□□□□'s first semester report card. Moreover it is district policy that all incompletes must be made up within six weeks of the end of the semester, which in this case was February 1. Two weeks into the second semester, Mr. Howard wrote us that "Step one is approved waiting for the learning plan from the teachers." On March 13, two days before the expiration of the six week period, we hear from □□□□□'s social studies teacher that a plan for making up the incomplete has finally been created.

Failure to acknowledge a sexual assault occurred

The school administration is content to believe the perpetrator's false claim that he had consensual sex with □□□□□ the night of November 6 in the presence of other students, even though the assailant's bizarre account contradicts forensic evidence. Consider that all of the medical and mental health professionals who have examined □□□□□ have recorded diagnosis codes for trauma consistent with the aftereffects of rape. No professional has concluded that she is malingering or feigning trauma to cover up a consensual sexual encounter. Consider the following:

- **Olympic Medical Center, Port Angeles.** On November 7, □□□□□ was admitted and treated for sexual assault, according to hospital records. She voluntarily underwent an invasive forensic exam ("rape kit"), and was tested for STDs. She was prescribed emergency contraception and prophylactic antibiotics, which caused her significant unpleasant side effects.
- **King County Sexual Assault Resource Center (KCSARC).** □□□□□ received trauma and victim legal advocacy counseling from KCSARC staff.
- **Harborview Center for Sexual Assault and Traumatic Stress.** □□□□□ received counseling for PTSD. These sessions were ultimately discontinued because □□□□□ was re-traumatized by having to relive the events of the sexual assault.
- **Fairfax Hospital for Behavioral Health, Kirkland.** □□□□□ was admitted for PTSD treatment. She was there for three weeks, which is longer than the usual stay, owing to the severity of her trauma. She was prescribed antidepressants for the first time in her life.
- **□□□□□'s licensed family counselor**, who is contracted with Group Health Cooperative, has provided therapy for □□□□□ focused on the aftermath of rape.
- **Washington State Department of Labor and Industries** has recognized □□□□□ as a crime victim after conferring with the Clallam County Prosecutor's Office.

Failure to reply to our request for relief

Because the school administration has failed to provide for □□□□□'s safety and the continuity of her education post-assault, we sought help from an accredited educational consultant who conferred with □□□□□'s Group Health counselor about □□□□□'s ongoing educational and psychological needs. In the months following the rape, □□□□□ was languishing under the impact of full PTSD, unable to go to school, unable to study at home nor barely able to function. It was their professional opinion that □□□□□ should attend a residential treatment center where she would receive intensive therapy concurrently with an academic program in an environment appropriate to her condition. We are told that the length of stay required to complete this phase of treatment typically would last eight months (although it could be more because each rape victim responds differently). For □□□□□ to return to a productive and healthy life, the experts recommend that she later transition

to a second level of care at a therapeutic boarding school. This transition is to provide continuity of therapeutic care and to prevent a relapse that could destroy the gains □□□□□ is struggling to achieve. None of the therapists recommend propelling □□□□□ immediately into a mainstream education situation because of the smoldering and enduring effects of the sexual assault. In sum, the rape has compromised □□□□□'s high school education and represents a serious setback to the college preparatory trajectory she had planned. This is a sad contrast to what she might have achieved at Garfield.

These are expensive programs whose costs well exceed our financial resources. Mr. Howard has indicated a desire to follow the therapists' lead and we have done so by following their recommendation for placement in an integrated therapeutic and academic environment. We have requested relief from the school district for □□□□□'s ongoing treatment and educational program. Our requests have been ignored.

Failure in accountability to parents and community

The school district must acknowledge the devastation caused as a result of this rape. Consider how a successful, motivated Honors/AP student focused on a career in science, one of Garfield's few sophomores admitted to the advanced □□□□□□□□, a student who relished playing alongside the □□□□□□□□□□□□□□ and anticipated touring the East Coast with the GHS □□□□□□□□□□□□□□, has been shattered by this rape. Before the rape, music making was one of the most positive aspects of her life, but after the assault her □□□□□ has lain unplayed. Consider how her lifelong passionate connection with nature (a beautiful form of communion)—which has included banding birds in the Cascades, volunteering for Audubon, and spending countless hours *in nature*—has, by her own admission, been destroyed by an assault that occurred *in a nature camp*. After the assault she is unable to even consider completing her ecology course. These are just two examples among many—not to speak of the sense of pollution, violation, and defilement, which she has described in chilling terms in a personal essay. Consider also how her entire self-concept was shattered when a classmate assaulted her. Gone was □□□□□'s ability to engage in normal relationships as she knew them before the rape. According to the experts, she will revisit the rape each time she contemplates an intimate relationship. Research shows that rape victims are incapable of the deepest intimacy available to those whose life has not been scarred by rape.

No child—nor family—should have to endure the agony suffered over the last four months. No family should have to send their child off to a residential treatment center and suffer such a lengthy separation. The professionals associated with □□□□□'s care are shocked and outraged that □□□□□ was subjected to this emotionally scarring episode on what was supposed to be a fun and educationally rewarding outing. Tragically, she now has to live with the aftermath of this sexual assault for the rest of her life.

The school district is derelict in its accountability to us as a family and to the community. Although the school was made aware of the gravity of □□□□□'s condition by both us and her tutor, there is complete disregard for the implications of this fact: that our daughter was assaulted on a school

sponsored trip and that a rapist is freely allowed to attend school. We have provided a brief account of the district's negligence for our daughter's safety on the field trip and subsequent mismanagement of her educational needs post-assault. We must conclude that the school district believes if it ignores this inexcusable assault and its aftermath, we will soon forget about it.

On the contrary, we plan to escalate our concerns to Superintendent Banda, the Seattle School Board, and the Office of the Superintendent of Public Instruction, if necessary. We plan to ask for the full, transparent, *public* investigation we believe we are owed as the victim's family. We believe this investigation should at the very minimum answer these questions:

- Why was supervision so lax during the fieldtrip that girls and boys were allowed to go into each other's cabins after curfew? Why hasn't the school district corrected its chaperone policy in light of other incidents of this nature that have occurred on previous school trips?
- What internal investigation, if any, has the school district conducted regarding the November 6 incident, and what were the results?
- If there was an investigation, why weren't we informed and why wasn't [redacted] given an opportunity to participate?
- What disciplinary actions, if any, have been taken against the perpetrator? What required steps were taken concerning the assailant's status as registered sex offender?
- What offer will the district make to compensate [redacted] directly for her education, ongoing therapy, the loss of a normal college prep high school education, and for the enduring trauma of rape?

We expect to receive a full response on the content of this letter from a school district representative by April 1. If none is forthcoming, we will escalate our complaint to the highest local and state school officials, among others.

Sincerely,

[redacted] and [redacted]