

July 8, 2013

Mr. English,

We disagree with your recital of facts in your July 3 message.

*Staff observed the initial interviews of your daughter and other students. The male student involved asserted that the sex was consensual. Nonetheless, he was excluded from school, which would have permitted your daughter to immediately return to school if she chose.*

If you claim that school district staff observed the FBI interviews of our daughter, we can most assuredly tell you that is false. We took our daughter to those interviews. There were no school district staff present. According to the information we have seen, a teacher was present at only one student interview conducted by the FBI. The teacher was not present at the FBI interview with the assailant.

“Nonetheless,” you write “he was excluded from school.” What do you mean by “nonetheless?” According to the disciplinary codes, all students must be disciplined for engaging in sex at school or on a school sponsored field trip.

The district’s investigator, Mr. Kaiser, reported that the assailant was previously disciplined for “lewd conduct” in 2010 after having sexual intercourse at Mercer Middle School. He received an emergency exclusion (designated for dangerous persons and/or sexual assault) and a short term suspension. After assaulting our daughter in November 2012, the perpetrator was emergency excluded/short term suspended for a second time, again for “lewd conduct.” Astonishingly, the district did not even adhere to its own disciplinary code for punishing a second offense of lewd conduct. He should have received a long-term suspension. Why wasn’t the assailant disciplined according to the district’s code?

Not only was the assailant inappropriately disciplined, he was only charged with lewd conduct even though he admitted in November to actions that met the standard for sexual assault (E- 215). No one promptly probed further into his confession and the information we provided based on the National Park Service investigator’s report. What will the district do now that the assailant reaffirmed his assault by telling Mr. Kaiser he sodomized our daughter for 10 minutes after she told him to stop?

Considering that the assault of our daughter was labeled “lewd conduct,” isn’t it possible that the assailant’s previous offenses of “lewd conduct” were also sexual assault? How many times has the assailant committed sexual assault? In the event the assault of our daughter was at least his second sexual assault, he should have received even steeper consequences. Why didn’t the district immediately investigate our daughter’s sexual assault? Had the district done so, the assailant would have been disciplined for sexual assault, not lewd conduct.

Owing to the district’s failure to immediately acknowledge the assault and provide required Title IX services, we can only conclude that the district “bought” the assailant’s story of consensual sex without giving equal consideration to our daughter’s report of sexual assault. This is astonishing since the district knew of the assailant’s disciplinary history.

Why weren't we informed at the time that the assailant was emergency excluded? We only learned he was emergency excluded from school when you told us in April. We should have been told immediately, at the time he was excluded, as required by Title IX. The principal refused to tell us in November of any sanction applied to the assailant. If no one told us at the time the assailant had been excluded, how could our daughter return to school as you said she could have? This was the time for the Title IX officer and the safety department to facilitate our daughter's return to school. No one informed us of these services. After Mr. Howard refused to communicate with us about these sanctions, he wrote that we should address our concerns to the Park Service—which lacked any jurisdiction over the school environment!

*In the following months, at your request we prepared accommodations for your daughter, in the form of* FERPA [REDACTED]

[REDACTED] *We have repeatedly asked you to identify any additional accommodations she may need, but you have not requested any.*

We previously informed you about months of frustrations we experienced when attempting to obtain accommodations for our daughter after the assault. We detailed how we received contradictory information regarding FERPA [REDACTED]

[REDACTED]

The accommodations you refer to came five months too late. FERPA [REDACTED]

[REDACTED]

We also have detailed the district's inept handling of our request to give our daughter FERPA [REDACTED]

[REDACTED]

*We responded to your complaint within 30 days, on April 16, 2013, informing you of our findings, including the fact that your daughter's story changed from one interview to another. You asked for additional investigative work, including interviews of the other students. We hired an investigator and*

*he has interviewed the other students, as well as other individuals identified in his draft report. He asked to interview your daughter, and you declined that request, as well as his request for documents.*

What was the “investigative work” that formed the basis of your findings revealed in your April 16 letter? First you tell us that it is not the district’s long-standing practice to undertake an independent investigation concurrently with a criminal investigation conducted by law enforcement. Now you tell us that the district did indeed carry out “investigative work” by having staff observe a few interviews conducted by the authorities in November, even though you didn’t tell us of your “findings” until April. Which is it, Mr. English?

The “additional investigative work” conducted by Mr. Kaiser should have been done in November. Indeed, the district was obligated to carry out a “prompt and equitable investigation” when a sexual assault is reported, according to the federal directives related to Title IX. It was not until we escalated our complaint to OSPI and insisted on an independent investigation did the district “after further discussion” agree to fulfill its obligations six months later.

It was because we insisted that the district comply with federal Title IX directives that we now have Mr. Kaiser’s report. In it we learn that the perpetrator has now changed his story considerably from what he told the FBI and attributes false statements to our daughter. We also find that other students’ accounts of events to Mr. Kaiser do not match up with their original stories. Moreover, your remarks regarding our daughter fail to acknowledge how traumatized victims of sexual assault require time to be able to recount the nightmare of rape. Our daughter gave a full accounting of the assault.

You also fail to mention the reasons why we declined Mr. Kaiser’s request to interview our daughter and supply medical records and other documents. As we have explained time and again, our daughter is in residential treatment owing to the aftermath of the assault. She is not available for interviews, on advice of her therapists. Do you not consider that interviewing an assailant and a victim are two separate matters? The assailant chose to rape our daughter. Our daughter, on the other hand, was traumatized. As for the district’s numerous request for her personal records, we have told you time and again that we cannot supply privacy-protected documents without her consent. Are you expecting us to circumvent the law?

You mention responding within 30 days of our complaint. The school board should be reminded of the facts. Absent the required official response to our complaint with appeal directions from the Superintendent, OSPI advised us to seek an acknowledgement of our complaint. When it was not forthcoming we twice wrote asking you to answer with a “simple yes or no” whether you had provided the official response. You would not tell us yes or no. We also provided you and the school board correspondence from OSPI stating that Mr. Banda failed to provide the required response with appeal instruction. OSPI has been copied on the relevant correspondence.

*In the context of the above facts we do not agree that there are “mandatory Title IX procedures” that the District did not implement. To the contrary, the District took prompt steps to address the situation and prevent a reoccurrence.*

In the context of what facts, Mr. English? Whenever a sexual assault is reported, the district MUST immediately implement Title IX procedures.

This is the first time we have heard that the district “took prompt steps to address the situation and prevent a reoccurrence.” Exactly what were the “prompt steps” the district took to address the situation? We haven’t seen any. What “situation” did the district address? How do those steps prevent a reoccurrence? And a reoccurrence of what, exactly? If you indeed took these steps, why have you not reported them to us as required by Title IX?

Do these “prompt steps” include remedying the negligent chaperoning that permitted the sexual assault of our daughter? Do these steps include policy revisions that take into account students who have previously been disciplined for having sexual intercourse at school? We learned from Mr. Kaiser’s report that none of the teachers or chaperones were aware of or had read the district’s chaperone policies. We read how the male chaperone admitted to not being able to control the boys’ behavior. We learned that he wore earplugs and could not hear the comings and goings of students entering and leaving the cabin after curfew. We heard how male and female students texted each other for assignments after curfew. We read of female students (not our daughter) sleeping in the boys’ bedroom until 5 AM. We heard about the female chaperone not monitoring whether the girls returned from their trips to the bathroom. We read about a paranoid student on drugs hiding in the girls’ cabin.

According to Title IX, the district is required to provide students with an environment free from sexual discrimination, including sexual harassment and sexual violence. When our daughter reported a sexual assault, the district should have immediately conducted its own investigation instead of claiming it must wait until a criminal investigation is concluded. Why? The focus of a criminal investigation is entirely different from the school’s investigation of sexual assault and that is why a different standard of evidence is applied, as you should know. The focus of the district’s investigation is to examine how sexual assault could occur, to review its policies, and to discipline the assailant appropriately, among other tasks. It did not do so. From what you wrote previously, it appears you “bought” the assailant’s story of consensual sex rather than affording our daughter’s report of assault equal consideration. Had you taken her report of assault seriously, you would have investigated it as required by Title IX. In our view, no one in the district knew anything about how Title IX applied in this case, including the Title IX coordinator, Mr. Apostle. It was not until we escalated our complaint to OSPI, did we learn of the district’s obligations under Title IX. Apparently this was also the first time the district had heard of its obligations.

You will no doubt again disagree with our statements. But the facts speak for themselves. Every one of the district administration staff and every school board member should be asking themselves: What if my child were sexually assaulted on a school field trip? Wouldn’t I want to know why this was allowed to occur? Wouldn’t I demand answers and accountability? How would I feel if the district failed to provide those answers and made excuses because it prioritizes its liability over my child’s safety? How would I feel if the school board knew of the assault but did absolutely nothing to hold the district accountable for my child’s safety and the safety of all students on school field trips?

When the community learns of our family's devastating experience, we believe they will be asking these same questions. Are you prepared to answer them with full transparency?

Sincerely,

parent [REDACTED] and parent [REDACTED]