

May 21, 2013

Mr. English,

Regarding your email of May 20th (nb my last name is **parent**):

You wrote: "We received your March 18 letter on March 22, 2013. The law enforcement authorities asked that we not interview witnesses until they completed their investigation. There was no need to take any additional action at that time, since your daughter has not returned to either Garfield or the other school we offered for her to attend."

1. Title IX says that an investigation *must* proceed regardless of any criminal investigation underway. This is a federal requirement.

Contrary to Title IX requirements, you wrote us on April 5, April 16 and May 20 that the district policy is to wait until a criminal investigation is completed before undertaking an investigation. Why? Title IX *unequivocally states that an investigation is not to be delayed by any criminal investigation underway*:

"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."

"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."

Moreover, why didn't the Title IX official reach out to us as required by law?

We believed that the district stalled and ignored our questions about accountability to circumvent responsibility for its failed chaperoning policies, hoping the "problem" would evaporate over time.

2. "There was no need to take any additional action at that time," you wrote. Why not? First, whether or not our daughter was at Garfield or any other school does not excuse the district from its responsibility to conduct a prompt and equitable investigation.

Second, and contrary to what you wrote, there most certainly *was need* to conduct an investigation. Our daughter was a successful student and was **[REDACTED]**. Had Mr. Howard informed us that of the sanctions imposed upon the assailant as we requested on November 8 and as required by Title IX, our daughter could eventually have returned to Garfield. Had the school

taken note of the assailant's self-incriminating remarks that met the district's standard for sexual assault: E-215 made to the investigators, principal, and teachers, he could have been transferred. Instead, absent the required action on the part of the principal to inform her of the sanctions imposed, our daughter could not return for fear of retaliation and further harassment. *To assert that there was no need to take actions that would have allowed our daughter to return to Garfield is grossly incorrect!*

3. As you know, the investigators completed their witness interviews at Garfield in **November**, just a few weeks after the assault. This was obvious since the investigators ceased coming to the school. There was no reason to desist from the required investigation for five months (until you relied upon us to inform you that the investigation ended months earlier). While those interviews were taking place and subsequently, you were free to obtain information from numerous sources,

Had the district conducted a proper and timely investigation, you'd have had the information you lacked in early correspondence (e.g. April 7) regarding chaperone responsibility, the correct number of chaperones and participants, and other basic facts known since last November. Even to this day, we still haven't been given basic teacher-completed planning and parent informational forms the teachers supplied and would be in the file had a proper investigation occurred.

4. The onus was upon the district to conduct a prompt and equitable investigation and inform us of the results. Instead you say you relied on others, including the FBI and the parents of the victim to inform you when the investigation ended. Since when does the FBI notify all parties in an investigation that it has completed its interviews and report?

5. Rather than beginning promptly, you wrote on April 7 that you would *initiate* an investigation *five months after the assault*. On April 16th you provided a few tidbits of information that was known since November. You relied on the teacher's observations of a few interviews, you wrote, rather than directly interviewing the students and assailant. This scant information is an unfortunate commentary on the "substantive investigation" you claim the district conducted. How does relaying a few comments from a teacher five months after the assault constitutes a prompt and equitable investigation? Why does the district rely on such second hand testimony? How does the district's policy of interviewing students six months after the assault assure for accurate information after students have processed it amongst themselves?

For these and other reasons, we do not agree that the district fulfilled its Title IX obligation to our daughter. Moreover, you have failed to address our repeated questions of safety and retaliation that could ensue as the investigation is rekindled. We understand these are also Title IX questions that deserve a prompt response. Why haven't you addressed Title IX responsibilities? Not once have the words "Title IX" been mentioned to us by the school or the district.

You wrote: "As you know, we do not have any sort of a report from the law enforcement authorities, and were not notified that they had completed their investigation."

1. What bearing does this have on your responsibility to conduct an investigation? Why did you expect the FBI to notify you or volunteer a report? Surely as an attorney you know how these matters progress. How did we find out the investigation was finished, Mr. English? By taking the initiative to ask.

If the school district were truly invested in fulfilling its statutory responsibility, it would have inquired after it saw the parks department complete the interviews on campus in *November*. *But you tell us you did not inquire*. Why didn't the district take initiative to fulfill its obligation instead of relying on the victim's parents to escalate a complaint? Not once over the months did the district offer us any tangible assurance that they were attending to our questions responsibly. Mr. Howard promised us answers in writing that never materialized.

You wrote: "You did not inform us of that fact until your March 18 letter. I immediately contacted both the FBI and US Parks Service as well as the Attorney General's office, but they refused to provide us with any records. We have filed a public records request for their report, but anticipate they will refuse to provide or will heavily redact anything they have. You have refused to allow us to interview your daughter, and have not provided us with any of the documents you possess."

1. It was never our responsibility to inform the district that the investigation ended. We expected that the district would be vitally interested in following up on this case of assault. Nor did the district have to wait months to learn from the victim's family that it had ended. Had we not written on March 15, you would still be waiting to hear from the FBI. *You only acted "immediately" five months after the assault when obliged to owing to our complaint.*

2. As stated previously, we have not "refused to allow" you to interview our daughter. We have explained repeatedly that she is in treatment from the trauma of rape and the therapists have warned us about re-traumatizing her. Is it fair to subject her to a relapse? Do you know anything about the insidious nature of rape? For example, the mention of the assailant's first name is a tremendous trigger. Mr. English, why would you want to subject her to this when she has already suffered so much? You have ample sources of information available to explain why a sexual assault was allowed to occur.

3. Our job is not to provide you with information. We *know* what happened. Your job is to explain why chaperoning was so lax that both boys and girls entered each other's cabins day and night. Your job is to find out why the assailant raped our daughter. He already told the teachers, Mr. Howard, and the investigators what he did. *By his own admission, he met the standards for sexual assault. Have you not read the statute E-215?*

4. We already explained to you that the documents we possess are privacy protected and require

Student 1 release. *Are you again asking us to violate privacy laws by giving you documents?* You can conduct a thorough investigation without our documents. We wrote that we can substantiate all our claims. It is your responsibility to substantiate yours.

You wrote: "I provided a substantive response by email on April 16, 2013, detailing all of the facts we had at that time. At your request, we are now conducting an additional independent investigation of the facts, and will provide you with the results of that investigation when it is complete. You have made public records requests for documents, and we have responded to those requests."

1. We disagree that the short April 16 email based on the teacher's second hand reports of a few interviews constitutes a "substantive response." Was that the prompt and equitable investigation report we are owed under Title IX?

Why did you conduct an "additional investigation" at our request if you had already provided a "substantive response? Had we not challenged the district on March 15th, the only information we'd have had was the meager information already known to us since November.

2. We are not requesting a second, additional investigation. No, we are holding the district accountable for undertaking the substantive, prompt, and equitable investigation that should have begun months ago. It is a sad state of affairs when parents must expend so much energy hounding the district to take responsibility.

3. The district has *not* adequately responded to our requests for documents. We have *repeatedly* requested all the completed planning forms (not blanks) and communications sent to the parents concerning the field trip. We have received only a few documents with *obvious omissions*. Ms. Carlson has *not* provided the documents.

You wrote: "We have advised you of your daughter's rights to request accommodations and you have stated none are required."

1. Contrary to this assertion, we didn't require your advice in March and April about our daughter's rights to request accommodations. Immediately following the rape, we asked Mr. Courtney for the full array of services available. No one volunteered such services as FERPA or Title IX resources. FERPA

We learned about Title IX from OSPI, not the Seattle school district.

Where was the information we needed months ago? Our requests for accommodations were mangled by the district. One of the most important accommodations, that of safety/retaliation, was brushed aside by Mr. Howard on November 8. **Student 1** had the basic right to be informed of sanctions against the

assailant. That was the first accommodation that would have allowed her the option of going back to school. We asked Carol Rusimovic for accommodations appropriate to a rape victim and she ceased communicating with us. We asked FERPA [REDACTED]. The time to assist our daughter was months ago. To assert that you have helped us in your March correspondence is yet another attempt to appear responsible long after the damage was done.

You wrote: “We have notified you of the procedure for asserting a financial claim against the district, and you have not submitted anything.”

1. We already pointed out that the district sent us a form for medical/accidental injury. This form is irrelevant to student 1 injury. The district has also told us it assumes no responsibility for the damages she sustained, *so kindly inform us why a form for accidental injury is of any value.*

You wrote: “We anticipate Mr. Kaiser will complete his work in the near future. When Mr. Kaiser has submitted his written report, we will have the Superintendent to review it and we will notify you of his conclusions, as well as provide you a copy of the report.”

1. Please note that we asked to have the all information from this investigation and for the opportunity to raise questions that the investigator may not have considered.

You 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. I will not speculate. Given that Mr. Kaiser is reviewing the facts of what happened, I will wait until he is finished.”

1. Sexual contact, touching sexual organs oral sex, sexual harassment, sexual intercourse, sodomy, sexual harassment, sexual assault, etc. are prohibited on school field trips as defined in E-215.

E-215 Sexual Assault

Sexually assaulting or taking indecent liberties with another person.

Sexual assault includes unwanted touching or grabbing of sexual parts, indecent exposure, using force to engage in intercourse, oral sex, or other sexual contact, — pantsing behavior by other than elementary-age students, engaging in intercourse or oral sex whether or not the other person clearly refuses or does not have the mental or physical ability to consent. Sexual assault does not include incidental touching unless it is flagrant, purposeful, or repeated.

Do Superintendent Banda and the School Board agree that such activities can occur under certain circumstances? Who will decide if it is permissible? Who may have sex? If sex on school trips is permissible under certain circumstances, then the school board will have to re-write and publicize its policies. *It would be interesting to hear public opinion on this question, and to know whether the Superintendent and School Board Director (for whom you say you speak) concur that sexual assault, sodomy, and other E-215 violations could exist concurrently with appropriate chaperoning. Parents will undoubtedly be interested in such novel policies.*

Chaperoning exists to protect our children from prohibited behaviors. There is no circumstance that could ever justify sexual assault on a fieldtrip

Regarding your letter of May 14.

Regarding question of discipline you wrote: "Nor do we believe it is appropriate to comment on whether your daughter should be disciplined for her conduct, prior to the present investigation being completed."

You stated that the district conducted the required investigation. Now you state you must reply on a second investigation (which you say was undertaken only to satisfy us) to determine whether our daughter might be disciplined. The district has had six months to determine whether our daughter had "consensual sex" on this field trip. Why weren't we informed as a result of your prior "findings" that she should be disciplined like the assailant was six months ago? The assailant received an immediate emergency exclusion and he admitted to the investigators, the principal, and others that he "had sex" on the trip. If Garfield has proof that our daughter had "consensual sex" on this fieldtrip, then she should have been disciplined at the same time as the assailant was.

You wrote that the lack of discipline as irrelevant at this point since **student 1** doesn't attend a Seattle School. Since when does a school district fail to discipline a student and make note of it on the transcript because the student withdraws from school a few months later? This begs the questions: how many other instances of discipline have failed to reach student records, particularly students on the November fieldtrip? Why weren't *numerous* students disciplined for being outside their rooms? How many disciplinary actions weren't enforced or recorded on students' records? Has the assailant's prior disciplinary record been cleansed?

Because the district never admitted that **student 1** had or could have been raped, it must have concluded that she had "consensual sex." Wasn't it the district's responsibility to promptly mete out required discipline to the assailant *and* to our daughter if they felt she had consensual sex?

At the same time it appears the district never believed she had consensual sex, because we weren't informed of her transgression. In addition, the district wrote **FERPA**

[REDACTED]

[REDACTED]

How do you explain these contradictions, Mr. English?

Clearly the preponderance of evidence demonstrates that our daughter—taken to the hospital for sexual assault by the teacher following the rape, treated by RCW 42.56.360(2)

—must have been sexually assaulted. The school acknowledged this when it failed to punish her for "consensual sex" and wrote FERPA

Why did the school ignore the preponderance of evidence? Why did it fail to extend her all Title IX rights and services?

"Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence."

"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."

No school official ever offered an explanation of Title IX rights. Why not? Only when we escalated our complaint did OSPI make it known that our daughter was protected under Title IX.

Lastly, we repeatedly asked the district about retaliation and safety immediately after the assault and more recently with the new investigation. Our queries were not answered. Mr. Howard instructed us in writing on Nov. 9, 2012 to communicate with the parks department investigators yet they had no jurisdiction over school safety. We note that you recently sent our concerns about retaliation on to the investigator. What ability does a private investigator have to address concerns about retaliation? We have heard nothing from him regarding our concerns. We believe the failure to address this important issue constitutes another violation of Title IX.

Sincerely,

parent