

DETERMINATION REGARDING RESPONSIBILITY

Complainant: 
Respondent: 
Decision-Maker: Dr. Jennifer Hinson
Date: November 22, 2024

This is the written determination regarding responsibility regarding a formal complaint alleging Title IX sexual harassment in a District education program or activity and against a person the United States. Specifically, the formal complaint includes the following allegation(s) potentially constituting sexual harassment as defined in the regulations implementing Title IX of the Education Amendments of 1972, 34 CFR § 106.30:

- *On or around April 19, 2024, the Respondent smacked the Complainant on her butt while at recess and in the lunch line, tried to kiss her and touch her chest area, tried to hump her; and told her he will hump her when they are older.*
- *In the Fall of 2022 and continuing into the Spring 2023 semester, the Respondent made mean comments and became jealous if the Complainant played with other male students during recess.*
- *On March 23, 2023, the Respondent hit the Complainant in the back with a rock and called her a pathetic loser.*
- *The Respondent continued to harass and bully the Complainant during the 2023-2024 academic year, including by asking the Complainant to “go somewhere” during recess, during the 2023-24 school year would attempt to kiss the Complainant, grab her bottom, grab her chest, and hug her from behind.*

The District’s Title IX Coordinator, Stacie Seveska, assigned me, Dr. Jennifer Hinson, Principal of Williams Elementary, to serve as the decision-maker for the formal complaint. The investigation and decision were conducted under the District’s Title IX grievance process, which can be found in Georgetown ISD Board Policy FFH(Legal).

The decision-maker reviewed the relevant evidence obtained during the investigation and decision-making process, including the directly related evidence, any responses to the directly related evidence, the investigative report, any responses to the investigative report, and any written questions and answers obtained during the decision-making process. After a careful review of the information available in the record, the decision-maker concludes that there is sufficient evidence to support the allegation that the Respondent engaged in severe, pervasive, and objectively offensive behavior based on sex, by asking the Complainant to “go somewhere” during recess, repeatedly attempting to kiss the Complainant, grab her bottom, grab her chest, hug her from behind, and told her he will hump her when they are older. I also find sufficient evidence that the Respondent engaged in fondling, which is a form of sexual assault, when he touched

Complainant on the butt while in line for lunch.

This written determination summarizes the applicable policy requirements, the relevant facts obtained during the investigation and decision-making processes, and the decision-maker's findings.

Policy Requirements

The District's Title IX grievance procedures and relevant law prohibit Title IX "sexual harassment" in the District's education program or activity and against a person in the United States.

Under Title IX, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Under Title IX, "education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

In response to a formal complaint, a recipient must follow a grievance process that complies with the District's Title IX sexual harassment grievance process and regulations implementing Title IX, 34 CFR § 106.45. Among other things, that grievance process must require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness and include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The District's Title IX sexual harassment grievance procedures and relevant law require that the decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the preponderance of the evidence standard, meaning the decision-maker(s) must find

that it is more likely than not that the conduct alleged to be Title IX sexual harassment in the District's education program or activity and against a person in the United States occurred. If sufficient evidence to establish the allegation is found, the Decision-maker will determine that the alleged perpetrator (the "Respondent") is responsible for the alleged conduct and determine whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the complainant. The Title IX Coordinator is responsible for effective implementation of any remedies.

The Parties

The Complainant is a student who was in the 4th grade at Williams Elementary at the time of the alleged incident(s). At the time the formal complaint was filed, the Complainant was attending Williams Elementary School in Georgetown ISD. The Complainant is currently attending 5th grade at Williams Elementary in Georgetown ISD.

The Respondent is a student who was in the 4th grade at Williams Elementary at the time of the alleged incident(s). The Respondent is currently attending 5th grade at Carver Elementary in Georgetown ISD.

Procedural History

The following are the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.

- The formal complaint was filed by the Complainant, Carolyn Confer on behalf of [REDACTED] on April 23, 2024.
- A copy of the initial formal complaint is attached to and incorporated into this written determination as [REDACTED]
- A supplemental formal complaint was filed on May 13, 2024. A copy of the second formal complaint is attached to and incorporated into this written determinations [REDACTED]
- The District's Title IX Coordinator or designee provided written notice of the allegations to the known parties on May 2, 2024. Copies of the notices are attached to and incorporated into this written determination as [REDACTED]
- The District's Title IX Coordinator or designee appointed Adria Filla to serve as the investigator in this matter on May 3, 2024. A copy of the appointment notification is attached to and incorporated into this written determination as [REDACTED]
- The investigator investigated the formal complaint between May 3, 2024 and August 4, 2024 by conducting interviews and collecting both inculpatory and exculpatory relevant evidence. The procedural details of the investigation are set out in the Investigation Report, which is attached to and incorporated

into this written determination as [REDACTED]

- On May 31, 2024, prior to completion of the investigative report, the investigator provided each party an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source, so that each party could meaningfully respond to the evidence prior to the conclusion of the investigation. Copies of the notices are attached to and incorporated into this written determination as [REDACTED]
- The investigator provided the parties at least ten calendar days, or until June 10, 2024 to submit a written response to the directly-related evidence. However, due to an extension of the timeline the final date of response was August 28, 2024.
- The Complainant submitted a formal response to the directly-related evidence on September 4, 2024. A copy of the Complainant's response is attached to and incorporated into this written determination as [REDACTED]
- The Respondent submitted a formal response to the directly-related evidence on September 19, 2024. A copy of the Respondent's response is attached to and incorporated into this written determination as [REDACTED]
- The investigator considered the response prior to completion of the investigative report.
- On August 5, 2024, the investigator completed the investigative report, which fairly summarizes the relevant evidence obtained during the investigation. A copy of the investigative report is attached to and incorporated into this written determination as [REDACTED]
- At least ten business days prior to this written determination, the investigator sent the investigative report in electronic format or hard copy to each party and the party's advisor, if any, for their review and written response. The notice explained that a written response to the report was due no later than ten calendar days after service of the report, which was August 19, 2024. Copies of these notices are attached to and incorporated into this Determination as [REDACTED]
- The Complainant submitted a formal response to the investigative report on August 14, 2024. A copy of the Complainant's response is attached to and incorporated into this written determination as [REDACTED]
- The Respondent submitted a formal response to the investigative report on August 15, 2024. A copy of the Respondent's response is attached to and incorporated into this written determination as [REDACTED]
- The District's Title IX Coordinator or designee appointed Jennifer Marek to serve as the the decision-maker in this matter on October 1, 2024. The Complainant objected to her appointment based on a perceived bias on October 7, 2024. A copy of the objection is attached to and incorporated into this written determination as [REDACTED]
- In response to the Complainant's objection, the District's Title IX Coordinator

or designee appointed Dr. Jennifer Hinson to serve as the decision-maker in this matter on October 10, 2024. A copy of the appointment notification is attached to and incorporated into this written determination as [REDACTED]

- On October 15, 2024, after the investigator sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker afforded each party the opportunity to submit written, relevant questions that a party wanted asked of any party or witness. Copies of the notices are attached to and incorporated into this written determination as [REDACTED]
- On October 17, 2024, the respondent requested access to the interviews to review in order to submit relevant questions. The respondent subsequently submitted a request for extension on October 18, 2024. A Copy of the requests are attached to and incorporated into this written determination as [REDACTED]
- On October 21, 2024, the decision maker provided each party notice of extension of the timeline as requested by the respondent. A copy of the notices are attached to and incorporated into this written determination as [REDACTED]
- On October 28, 2024, the respondent requested an additional person be interviewed. A copy of the request is attached to and incorporated into this written determination as [REDACTED] On October 31, 2024 the Title IX coordinator, Mrs. Seveska, consulted with the respondent and the decision was made that there was already existing testimony that compared to what the respondent felt would be provided by the requested witness so additional interviews would not be conducted.
- On November 1, 2024 the respondent's attorney, Marc Chavez, requested an additional extension of the timeline to give him the opportunity to review the evidence and investigative report in order to properly submit relevant questions if needed. Subsequently, the request for extension was granted by the decision maker. Copies of the notice of second extension are attached to and incorporated into this written determination as [REDACTED]
- Neither party timely submitted additional follow-up questions to the decision-maker.

Findings of Fact Supporting the Determination

Based on my review of the record, I make the following findings of fact:

- *Regarding the allegation "In the Fall of 2022 and continuing into the Spring 2023 semester, the Respondent made mean comments and became jealous if the Complainant, [REDACTED], played with other male students during recess" several witness corroborated the fact that the respondent, [REDACTED], at times would make mean comments but there were no statements indicated that the Respondent was jealous when the Complainant played with other male students.*
- *Regarding the allegation "On March 23, 2023, the Respondent, [REDACTED]*

██████ hit the Complainant, ██████ in the back with a rock and called her a pathetic loser” was confirmed among several witness statements. However, the only evidence as to why it occurred was the teacher’s statement that the two students had a “love-hate” relationship. But, based on the context, this was meant to refer to the fact that they went back and forth between wanting to spend all their time together and not wanting to have anything to do with one another. There is nothing to indicate this desire or the throwing of the rock was based on either student’s sex or gender.

- Regarding the allegation the Respondent would attempt to kiss the Complainant, grab her bottom, grab her chest, and hug her from behind, this behavior was substantiated with several witness statements and security video footage. While the evidence suggests that at least some of these hugs were welcome and consensual because video footage shows the Complainant actively participating in at least some hugs. However, there is sufficient evidence to find some of these hugs were unwelcome. Video footage showing other students holding the Respondent back while he attempted to lunge toward her and witness testimony that she would tell him no and he would persist in this behavior is sufficient to make it more likely than not that the Respondent attempted to touch her even when directed to stop.. This conclusion is further supported by the fact that the Complainant requested assistance from others to “protect her” from ██████. Further, the witness statements that the Respondent considered the Complainant to be his girlfriend is at least some evidence that this is why he hugged her. Witness testimony also establishes that this behavior was repeated, and not merely an isolated incident.
- The Respondent admitted to touching the Complainant on her butt. While he told the investigator that he was “joking around,” he also admitted to previously having a crush on the Complainant. This, combined with witness testimony that he considered her his girlfriend is sufficient to make it more likely than not that the touching was for the purpose of sexual gratification.

Application of the Facts to the Policy

Therefore the decision maker concludes that the facts constitute a violation of Title IX as the conduct happened within an education program and against a person in the United States. Furthermore the misconduct was objectively offensive, pervasive, and continuous over time and ultimately interrupted the education of the complainant, ██████. Therefore, this behavior is sufficient to have created a hostile environment for the Complainant. In addition, the Respondent touched the Complainant on her butt, a private body part, for the purposes of sexual gratification. This touching constitutes fondling, a type of prohibited sexual assault under Title IX.

Determination Regarding Responsibility

Based on the record, my findings of fact, and my application of the facts to the policy, I find that the Respondent **is responsible** for one or more allegations of Title IX sexual harassment in the District's program or activity and against a person in the U.S. Specifically, the Respondent is responsible for using harassing words and gestures of a sexual nature. As explained above, I reached this determination because the misconduct happened during the school day, on school property, against a person in the United States and was offensive, pervasive, and continuous over time and in a sexual nature.

Because I have found the Respondent responsible for this conduct, I recommend that the District impose the following disciplinary sanctions on the Respondent: 20 school days at the district's alternative education program to be served during the 24-25 school year. While serving the 20 days, it is recommended that the respondent participate in social skills instruction that helps the respondent learn how to appropriately communicate with others whom he finds attractive or desires. Currently, the complainant and respondent do not attend the same school but in the future they will potentially attend the same middle and high school. It is recommended that an offer for separate schools still be in effect but not required as the respondent will have served consequences for his actions and has been separated from the complainant for over a year by that time. Remedies to the Complainant designed to restore or preserve equal access to the District's education program or activity will be communicated to the Complainant separately.

Procedures and Permissible Bases for Appeal

Both parties may appeal any dismissal and this written determination. A party commences an appeal by submitting their appeal electronically to the Title IX Coordinator within ten calendar days of electronic service of this decision. Ten calendar days from the date of this written determination is December 2, 2024. Appeals can be submitted via email by 11:59 p.m. on the due date or in person at 507 E. University Ave, Georgetown, TX 78626 during normal business hours prior to the close of business on the due date.

Appeals may be brought **only** upon one or more of the following grounds:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could have affected the outcome of the matter; and
3. An allegation that the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against

complainants or respondents generally, or the individual complainant or respondent in this matter, that affected the outcome of the matter.

The appeal must set forth:

- the dismissal or written determination being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the ground(s).

A copy of the appeal form is enclosed with this determination.

Conclusion

This concludes the written determination regarding responsibility. The District must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator is responsible for effective implementation of any remedies.

Enclosure: Appeal Form