

OCR re: Loudoun County, VA and Title IX



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March 23, 2023

The Honorable Catherine E. Lhamon  
Assistant Secretary  
Office for Civil Rights  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202

Dear Assistant Secretary Lhamon:

We write to follow up on our October 18, 2021, letter to Secretary of Education Miguel Cardona.<sup>1</sup> In that letter, we raised substantial concerns about, among other things, the Department of Education's ("Department") misguided interpretation of Title IX,<sup>2</sup> two sexual assaults in Loudoun County Public Schools ("LCPS"), government officials' targeting of concerned parents, and LCPS' apparent noncompliance with Title IX. It took the Department until July 15, 2022 – nearly nine months later – to respond.<sup>3</sup> Not only were the Department's responses to our letter woefully late, but they were also minimally responsive. Such a slow and inadequate response to our letter regarding the sexual assaults of two girls is unacceptable. As the Chairwoman of the Committee on Education and the Workforce, I, along with my colleague Rep. Mary Miller (R-IL), expect timely responses in the 118th Congress.

As you know from the previous letter, a 14-year-old biological boy wearing a skirt entered a girls' bathroom at Stone Bridge High School in LCPS on May 28, 2021, and sexually assaulted a ninth-grade girl.<sup>4</sup> Then on October 6, 2021, the boy sexually assaulted a second girl at Broad

<sup>1</sup> See Exhibit A.

<sup>2</sup> Title IX of the Education Amendments of 1972; interpretation at <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>.

<sup>3</sup> See Exhibit B (Assistant Secretary Catherine E. Lhamon letter of July 15, 2022 to then-Ranking Member Virginia Foxx (R-NC), now Chairwoman).

<sup>4</sup> See <https://www.dailywire.com/news/loudoun-county-schools-tried-to-conceal-sexual-assault-against-daughter-in-bathroom-father-says>; <https://wjla.com/features/i-team/teen-suspect-found-guilty-in-loudoun-county-public-school-stone-bridge-high-bathroom-assault>.

Run High School, the LCPS' school to which he was transferred after the May 28, 2021, assault.<sup>5</sup> This situation is a clear example of the dangers of perpetuating your ill-advised interpretation of Title IX.

Almost a year later, a grand jury report roundly condemned LCPS' officials for their handling of the two assaults.<sup>6</sup> In the 91-page report, "the [grand] jury concluded that Loudoun administrators badly mismanaged the sexual assaults because of incompetence and a lack of interest in events."<sup>7</sup> Indeed, "[t]here were several decision points for senior LCPS administrators, up to and including the superintendent, to be transparent and step in and alter the sequence of events leading up to the October 6, 2021 [Broad Run High School] sexual assault . . . [and] [t]hey failed at every juncture."<sup>8</sup> Further, the parents of the Broad Run High School sexual assault victim authorized the release of the following statement:

\* \* \* \*

With the release of the Grand Jury report, the public now knows what we have suspected since the start of this tragic event – that what happened to her on October 6, 2021 could have and should have been prevented. Multiple red flags during the time period of May 12, 2021 to October 6, 2021 were raised and ignored, including the 12-page disciplinary record for the assailant that was also mentioned in the report.

One thing we feel is important to note is that over the last 14 months since our daughter was assaulted, not one member of the school board, LCPS administration, or even our local high school leadership has reached out to check on how she is doing, lend any type of support or even apologize for what we are going through as a family. That alone speaks volumes to what we have endured throughout this ordeal.

The senior leaders at both high schools, along with the Loudoun County Public Schools and School Board members, should be reminded that our fifteen-year-old daughter displayed more courage and leadership when she reported what happened to her to the Sheriff's Resource Officer than any of them ever did. *The ineptitude of all involved is staggering.*<sup>9</sup>

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<sup>5</sup> See <https://www.nbcwashington.com/news/local/northern-virginia/teen-accused-of-sexual-assaults-in-2-virginia-high-schools/2831314/> Convictions were obtained in both assaults, <https://wtop.com/loudoun-county/2022/01/judge-reverses-decision-teen-convicted-of-loudoun-co-high-school-sexual-assaults-will-not-go-on-sex-offender-registry/>.

<sup>6</sup> <https://www.loudoun.gov/specialgrandjury>.

<sup>7</sup> <https://www.washingtonpost.com/education/2022/12/05/loudoun-school-sexual-assaults-report/>.

<sup>8</sup> *Supra* n.6 at 2.

<sup>9</sup> <https://www.prnewswire.com/news-releases/parents-of-broad-run-high-school-sexual-assault-victim-react-to-special-grand-jury-report-on-the-investigation-of-loudoun-county-public-schools-301700785.html> (emphasis added).



Taking into account what we knew about LCPS' handling of the two sexual assaults, we asked Secretary Cardona to "provide information demonstrating whether or not Loudoun County Public Schools ha[d] complied with the Civil Rights Data Collection."<sup>10</sup> Though you acknowledged that the data is self-collected and self-reported and that LCPS "certified their data as accurate," you did not state unequivocally whether LCPS complied with the Civil Rights Data Collection. At a minimum, given the two sexual assaults, the grand jury report, and other publicly available information, the Office for Civil Rights ("OCR") is on inquiry notice that the LCPS self-certified data is or may be questionable. At a minimum, the data is worthy of further inquiry by OCR.

Second, we asked Secretary Cardona whether the Department "plan[ned] to initiate an investigation of Loudoun County Public Schools to determine if the school district is out of compliance with Title IX."<sup>11</sup> You failed to directly answer the question, which could imply a lack of interest or concern about what transpired in LCPS. You wrote,

The Department generally does not announce planned enforcement actions in advance. Anyone who believes that a school district has not complied with its obligations under Title IX can file a complaint with OCR. In situations involving a minor student, OCR's Case Processing Manual requires consent from the student's parent or legal guardian before OCR proceeds.<sup>12</sup>

Further, as recently as March 16, 2023, Loudoun County parents Jason and Tumay Harding detailed the many problems they faced in dealing with LCPS' Title IX office.<sup>13</sup>

Under the Title VI regulation 34 CFR §100.7(a) and (c), which also applies to Title IX matters,<sup>14</sup> OCR has full authority to conduct, on its own initiative, a compliance review or investigation of LCPS.<sup>15</sup> The facts in these foregoing instances make a compelling case for OCR to open a Title IX compliance review or investigation of LCPS, if it has not done so already.

We reiterate and add to our prior request for information and documents as follows:

- (1) State specifically whether LCPS has complied with all requirements of the Civil Rights Data Collection and explain why you determine that to be the case. If it has not complied with all requirements, please explain what you intend to do about the noncompliance.

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<sup>10</sup> Exhibit A at 3.

<sup>11</sup> *Id.*

<sup>12</sup> Exhibit B at 2-3.

<sup>13</sup> [https://www.loudounnow.com/news/first-parents-through-new-title-ix-office-want-changes/article\\_238f06e2-c357-11ed-ad11-9f08bdbcfb30.html](https://www.loudounnow.com/news/first-parents-through-new-title-ix-office-want-changes/article_238f06e2-c357-11ed-ad11-9f08bdbcfb30.html).

<sup>14</sup> 34 CFR §106.81.

<sup>15</sup> 34 CFR §100.7(a) ("The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part."); 34 CFR §100.7(c) ("The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.") (emphasis added).

- (2) Even if LCPS has technically complied, OCR is under inquiry notice to delve further into the matter given recent events in Loudoun County. Please explain what actions, if any, you intend to take. If you are not taking action, explain why.
- (3) The facts from May 2021 to the present provide a sound basis for opening a Title IX compliance review of LCPS. Has OCR initiated a compliance review of LCPS? If it has, what is the current status? If OCR has not initiated a Title IX compliance review, why not? Does it have plans to do so?
- (4) As noted, the recent facts in LCPS establish a compelling basis for opening a Title IX investigation of LCPS. Has OCR initiated a Title IX investigation of LCPS? If it has, what is the current status of the Title IX investigation? If OCR has not initiated a Title IX investigation, why not?
- (5) Has a Title IX complaint been filed with OCR regarding the two sexual assaults noted in this letter? If so, what is the status of the complaint?
- (6) Provide all communications and correspondence, including but not limited to electronic mail ("email"), email attachments, texts, letters, memoranda, and other documentation and virtual meeting recordings of or between any of the following Department officials (during the period May 1, 2021, through the date the search for the records is conducted) wherein LCPS was mentioned or otherwise discussed:

- (A) Secretary of Education Miguel Cardona;
- (B) Deputy Secretary Cindy Marten;
- (C) Assistant Secretary Catherine E. Lhamon, Office for Civil Rights;
- (D) Assistant Secretary Roberto Rodriguez, Office of Planning, Evaluation and Policy Development;
- (E) James Lane, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education;
- (F) Kelly Leon, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Communications and Outreach;
- (G) General Counsel Lisa Brown;
- (H) Chief of Staff Sam Ames, Office for Civil Rights;
- (I) Deputy Assistant Secretary Monique Dixon, Office for Civil Rights;
- (J) Deputy Assistant Secretary Seth Galanter, Office for Civil Rights;
- (K) Deputy Assistant Secretary Suzanne Goldberg, Office for Civil Rights; and
- (L) Deputy Assistant Secretary Randolph Wills, Office for Civil Rights.

Please respond in writing to these questions and requests (instructions attached) no later than two weeks after the date of this letter.

We look forward to your timely response.

Sincerely,

*Virginia Foxx*

Virginia Foxx  
Chairwoman  
U.S. House Committee on Education & the  
Workforce

*Mary E. Miller*

Mary Miller  
Member of Congress

Enclosures  
CC: Secretary Miguel Cardona







UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 11, 2023

The Honorable Virginia Fox  
Chairwoman  
Committee on Education and the Workforce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairwoman Foxx:

I write in response to your March 23, 2023, letter requesting information regarding civil rights compliance at Loudoun County Public Schools (LCPS) with regard to sexual assault and the U.S. Department of Education's Civil Rights Data Collection (CRDC). I appreciate and share your interest in, and I recognize the importance of, ensuring schools are safe places where all students can learn and thrive without unlawful discrimination, harassment, or violence. I will send a substantively identical response to the cosigner of your letter.

Your letter states that LCPS CRDC data from 2021 "is or may be questionable." The most recent CRDC data is from the 2017-18 school year, which predates the time period mentioned in your letter. As you know from my previous correspondence, for the 2017-18 CRDC, LCPS reported zero incidents of rape or attempted rape and 17 sexual assaults (other than rape).<sup>1</sup> LCPS certified that the data reported were true and accurate. The Office for Civil Rights' (OCR's) data quality review practice for that CRDC included reaching out to 15,582 school districts regarding possible data errors. As you can see in this [resource](#) regarding the 2017-18 CRDC sexual violence data, then-Secretary Betsy DeVos announced a specific initiative on the topic that included OCR reaching out to 50 school districts that had reported seemingly anomalous data to the CRDC. LCPS was not one of those districts.

OCR recently closed collection of CRDC data for the 2020-21 school year and is preparing the 2020-21 CRDC for public release later this year. I assure you that OCR will carefully assess the 2020-21 data submission made by LCPS.

OCR has updated our practices with respect to CRDC noncompliance and data quality review. In particular, OCR routinely addresses CRDC noncompliance as part of case investigations. For

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<sup>1</sup> See, Office for Civil Rights, U.S. Dep't of Educ., Civil Rights Data Collection, Loudoun Co. Public Sch., Offenses (2017), <https://ocrdata.ed.gov/profile/9/district/32526/offenses> (last visited April 4, 2023).

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example, in May and November 2022, OCR secured agreements from school districts to create plans subject to OCR review and approval to ensure accurate CRDC reporting after OCR investigations indicated errors in their data reporting.<sup>2</sup> In addition, OCR follows up with districts regarding CRDC noncompliance to secure commitments to correct data and compliance. Where necessary, the Department places conditions on districts' eligibility to receive federal funds.

Your letter also asks whether OCR has received a complaint regarding the sexual assaults noted in your letter and whether OCR has opened a Title IX investigation of LCPS. The answer to both questions is yes.

First, in October 2021, OCR received a complaint alleging that LCPS failed to respond appropriately to a report that a student was sexually assaulted in May 2021, which is one of the incidents referenced in your letter. OCR dismissed the complaint after we requested, but did not receive, a signed consent form from the student's parent. At the time, the parents who reported that their child was sexually assaulted in May 2021 announced that they planned to file a federal civil action raising Title IX claims against the school district.<sup>3</sup> OCR's case processing manual has long provided that we will not investigate claims pending before a court. We have since received, and opened for investigation, two complaints alleging that LCPS fails to meet its obligations under Title IX relating to sexual harassment. Those investigations will include evaluation of CRDC data reporting from the district.

Finally, Department staff will be in touch with Committee staff regarding the records requests contained in the letter.

I appreciate your continued interest in protecting students from discrimination and sexual violence. If you have additional questions or concerns, please contact Molly Petersen, Principal Advisor, Office of Legislation and Congressional Affairs, at 202-763-8035.

Sincerely,



Catherine E. Lhamon  
Assistant Secretary for Civil Rights

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<sup>2</sup> See U.S. Dep't of Educ., *U.S. Department of Education's Office for Civil Rights Reaches Agreement to Resolve Restraint and Seclusion Compliance Review of Horry County Schools in South Carolina* (May 24, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11195022-a.pdf> (resolution letter) and <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11195022-b.pdf> (resolution agreement); U.S. Dep't of Educ., *U.S. Department of Education's Office for Civil Rights Reaches Agreement to Resolve Restraint and Seclusion Compliance Review of Saco, Maine, Public Schools* (Nov. 5, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01195001-a.pdf> (letter) and <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01195001-b.pdf> (resolution agreement).

<sup>3</sup> See, e.g., WRIC/WJLA, *Parents suing Loudoun County Public Schools following reported sexual assaults* (Oct. 15, 2021), <https://www.wric.com/news/virginia-news/parents-suing-loudoun-county-public-schools-following-alleged-sexual-assaults/>.