Title IX Training Academy

Hypothetical

CONFIDENTIAL

FINAL INVESTIGATIVE REPORT[1]

Title IX Investigation Report
Concerning Complainant and Respondent

Prepared by: Assistant Principal Lee, Investigator
November 9, 2020

[1] *This hypothetical investigation report is not based on an actual complaint. The report is provided for instructional purposes only, it is not a complete report, and it purposefully includes unclear information in certain areas. While the organization of the report may be useful for the audience, each report should be organized in a way that is appropriate for the scope of the specific complaint investigated by the educational institution. Please excuse any typographical errors.*

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I. BRIEF INTRODUCTION

On or about October 2, 2020, the Title IX Coordinator for the District assigned Assistant Principal Lee ("Lee") to conduct an investigation and gather evidence related to whether Respondent sexually harassed and/or sexually fondled Complainant in the school library after school on August 21, 2020. The investigation proceeded under the District's Administrative Regulation ("AR") 5145.71. **Exhibit 1.**

II. THE INVESTIGATIVE BACKGROUND

A. Formal Complaint

The Title IX Coordinator met with Complainant and Complainant's parents on October 1, 2020.[2] Several hours after meeting with the Title IX Coordinator, the Complainant's parents submitted a formal complaint to the Title IX Coordinator, as set forth below, verbatim:

> October 1, 2020
>
> To Title IX Coordinator,
>
> Thank you for meeting with us about our options. Complainant wants to file a formal complaint against Respondent:
>
> 1. During the 2020-21 school year, Respondent and Complainant were friendly during speech sessions, and Complainant felt like Respondent flirted by looking and smiling at Complainant a lot. Respondent often waited for Complainant after speech so they could walk back to towards their classrooms.
>
> 2. On August 17, 2020, Respondent asked for Complainant's Snap, and Complainant provided it to Respondent. Later that day, Respondent sent Complainant a message saying, "you slay." Complainant responded "you extra."
>
> 3. Complainant struggled in algebra. Respondent heard Complainant complain about math and offered to tutor Complainant after school in the library. Complainant said yes. Respondent helped Complainant with math homework on August 20th for about 20 minutes. They decided to meet again on August 21st because there was a quiz scheduled for August 24th.
>
> 4. On August 21, 2020, Complainant and Respondent went to the library after school. The library was empty, and the librarian was working on the computer. Respondent chose a

[2] The Coordinator's notes from the intake meeting are set forth, below, under Section III.C.1. of this Report.

table far away from the librarian. After they sat down and started looking at a review sheet, Respondent said that algebra was "messed-up." Complainant agreed and laughed. Respondent placed a hand on Complainant's right knee and said they should "smash." When Complainant looked confused, Respondent's hand quickly moved up Complainant's leg, and Respondent's hand grabbed Complainant's groin area on the outside of Complainant's jean shorts. Respondent said, "You know, smash." Complainant moved away from Respondent by shuffling the chair away, but Respondent leaned towards Complainant and kept a hand on Complainant's upper inner thigh. Respondent said, "You'll like it, I promise." Complainant stood up, faltered while moving the chair, and quickly left without taking the review sheet. Complainant walked home.

5. Complainant failed the Algebra quiz on August 24, 2020, and was absent due to illness for the next 4 days. While Complainant was home sick, Complainant's parents asked what was wrong, but Complainant did not want to talk about it.

6. Complainant told a friend, Riley, on August 31, 2020 that Respondent was shady. Riley asked questions, but Complainant refused to answer, even though Complainant seemed agitated.

7. On September 28, 2020, Complainant saw Respondent standing really close to Riley. That night Complainant told Complainant's parents more about what happened on August 21, 2020 in the library. Complainant's parents called the Principal, and the Principal put them in touch with the Title IX Coordinator. On October 1, 2020, Complainant and Complainant's parents met with the Title IX Coordinator and filed a formal Title IX complaint.

Exhibit 2.

B. Notice of Allegations

The Title IX Coordinator delivered a Notice of Allegations ("NOA") to Complainant, Respondent, and their respective parents/guardians via email on October 5, 2020. **Exhibit 3.**

C. Title IX Coordinator Meeting with Respondent

The Title IX Coordinator met with the Respondent on October 6, 2020. Respondent submitted a written response during their meeting. Information about the meeting with the Title IX Coordinator and the Respondent's written response are described in Section III.B. and C., below.

D. Witnesses

The following individuals were interviewed by the investigator:[3]

Name of Interviewee	Title	Date(s) of Interview
Complainant	9th Grade Student at High School	October 7, 2020
Respondent	10th Grade Student at High School	October 9, 2020
Librarian	Librarian for High School	October 9, 2020
Riley	9th Grade Student at High School; Complainant's Friend	October 12, 2020
Respondent's Mother	Mother of 10th Grade Student	October 13, 2020*
Math Teacher	9th Grade Algebra I Teacher	October 13, 2020

*Telephonic interview
^Zoom interview

The investigator admonished the parties and witnesses that they shall not tamper with evidence, interfere with the investigation, or attempt to influence witnesses. All interviewees were reminded they were subject to District policies prohibiting retaliation for either bringing a claim, reporting a concern, or participating in an investigation. The parties were reminded of their mutual agreement to stay away from each other and refrain from all forms of communication with each other until otherwise notified by the Title IX Coordinator. While the parties could speak about the allegations and the investigation process, they were admonished not to release confidential information outside of the District's complaint/investigation process.

E. Documents

Exhibit	Document
1	Administrative Regulation 5145.71, Title IX Sexual Harassment Complaint Procedures
2	Formal Complaint, dated October 1, 2020
3	Notice of Allegations, dated October 5, 2020, for Respondent and Complainant
4	Respondent's Written Response, dated October 8, 2020
5	Notes by Title IX Coordinator regarding October 1, 2020, Intake Meeting with Complainant
6	Notes by Title IX Coordinator regarding October 8, 2020, Intake Meeting with Respondent
7	Algebra I Math Review Sheet, dated August 17, 2020
8	Copy of Complainant Attendance Reports for August 2020
9	School Calendar and Bell Schedule for 2020-21 School Year

[3] The investigator provided written notice to the Complainant on October 5, 2020, via email about the interview scheduled on October 7, 2020. The investigator provided written notice to the Respondent on October 6, 2020, via email about the interview date scheduled on October 9, 2020.

F. Unavailable and/or Irrelevant Evidence

I attempted to review video footage from August 21, 2020, in the area near the entrance of the library and the adjacent hallway. However, the video footage had been deleted as of September 21, 2020, which was consistent with the stated practice of the school.

I also attempted to review Snapchat messages between the Complainant and Respondent between August 17, 2020, and October 1, 2020, but the Snapchat messages automatically deleted shortly after the time they were sent, and the parties did not otherwise save, copy, download, or otherwise document those messages.

I called the Speech and Language Therapist who conducted speech sessions with several students, including Complainant and Respondent. The speech therapist did not have any relevant or directly related recollections of interactions between Complainant and Respondent.

G. Relevant Board Policies and Administrative Regulations

For this investigation, I followed Administrative Regulation 5145.71, Title IX Sexual Harassment Complaint Procedures. **Exhibit 1.**

I also reviewed the Notice of Allegations for the parties, which listed potential policy violations based on Complainant's allegations. Complainant alleged sexual harassment by Respondent in the form of unwelcome physical and verbal conduct on the basis of sex as defined in AR 5145.71. The definition of sexual harassment applicable to this matter is:

> Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the district's education program or activity

Complainant also alleged sexual harassment when Respondent allegedly touched Complainant's private body parts, which may constitute a type of sexual assault under AR 5145.71.[4] The definitions of sexual assault include fondling, which is defined as:

> The touching of private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Exhibit 1.

[4] Sexual fondling is a form of sexual assault as defined under 20 USC 1092 or 34 USC 12291.

H. Evidentiary Standard

For this investigation, the evidence was reviewed, compared, and analyzed under a preponderance of the evidence standard to determine whether the allegations were with or without merit. "Preponderance of the evidence," for purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard.

I. Party Review of Draft Report of Evidence

On October 16, 2020, the parties received the Draft Report of Evidence with attachments via a secure dropbox for their review and inspection. The parties were provided with 10 calendar days to review the Draft Report. On October 19, 2020, Complainant sent the investigator clarifications about the impact on Complainant's access to the District's education. Specifically, Complainant explained that, while Complainant was doing better in algebra, Complainant "always" felt uncomfortable and "kinda scared" while on campus, even though Complainant had no contact with Respondent. As of the date of this Report, Respondent did not provide any comments or clarifications to the Draft Report of Evidence, despite opening the dropbox and viewing the Draft Report on October 25, 2020.

III. EVIDENCE REGARDING SEXUAL HARASSMENT AND OTHER SEXUAL FONDLING

A. Complainant's Allegations and Perspective

The Timing of Complainant's Report. During our interview, Complainant explained why Complainant filed a complaint at this time. Complainant started by describing what happened between Riley and Respondent. Specifically, when Complainant left school on Friday, September 28, 2020, Complainant saw Respondent standing close to Riley, which reminded Complainant of how Respondent acted in the library on August 21, 2020. Complainant felt "sad" and "mad" while seeing Respondent and Riley, which helped Complainant tell both parents what happened in the library. Complainant explained that Respondent wanted to "do things to" Complainant that were "embarrassing and wrong." Complainant initially did not want to give specifics, but both parents agreed to follow Complainant's lead about how to "work this all out," which made Complainant feel "a little better."

When talking more to both parents, Complainant admitted to liking Respondent's attention and thought Respondent was "kinda hot," but Complainant felt "clueless" about high school. Respondent offered to help Complainant in math, and Complainant was surprised, "flattered," and "relieved" because of the anxiety from taking algebra. Complainant said everything was "fine" during the first tutoring session with Respondent in the library. On the second day they met, Respondent said things to Complainant which Complainant did not "really understand." But when Respondent touched Complainant's right knee and "slid" a hand up Complainant's leg to "the private area," Complainant became embarrassed and left the library quickly. I noted that when

Complainant said, "The private area," Complainant's hand hovered over the lap and crotch area of Complainant's body.

Complainant's parents asked if Complainant reported the incident to the teacher or Principal. Complainant explained it did not "make sense" what happened or "what went wrong." Complainant felt embarrassed about all of it. When Complainant's parents expressed their sadness that Complainant did not tell them right away, Complainant explained, "I didn't want to talk about it." However, Complainant decided to tell them after seeing Respondent act "flirty" with Riley. The parents did not press Complainant for additional details, but Complainant agreed they could report the matter to the school. The Complainant and parents described meeting with the Title IX Coordinator, where Complainant discussed what happened with Respondent in the library and answered the Coordinator's general questions.[5]

Review of the Allegations. I acknowledged reviewing the formal complaint and asked Complainant some clarifying questions.

I asked why Complainant thought Respondent was flirting. Complainant said Respondent smiled at Complainant, looked for Complainant in speech class, asked to message with Snapchat, and complimented Complainant by saying, "You slay."

I asked Complainant what Complainant and Respondent did during the August 20th tutoring session. Complainant said they went over Chapter 1 of the algebra book, which was part of the review sheet. After the brief session, they agreed to go over the content in Chapter 2 the next day, on August 21, 2020. However, they did not go over much math at all on August 21, 2020. Respondent seemed to want to do "other things."

When asked why Complainant thought Respondent wanted to do "other things," Complainant said Respondent talked about how algebra was "not easy" and said something that made Complainant laugh. Complainant stopped laughing when Respondent placed a hand on Complainant's knee which was closest to Respondent. Complainant did not understand what Respondent was saying or doing at that time because it happened "so fast" as Complainant laughed. However, Complainant clearly recalled Respondent "kinda squeezed" Complainant's groin area.

When asked if Respondent did anything else, Complainant said, "No, but Respondent said 'smash' more than once." I asked Complainant what "smash" meant, but Complainant did not know exactly except that Respondent's tone of voice was lower and different than a "tutoring voice." Complainant learned from friends later that "smash" usually meant sex. That made sense to Complainant because Complainant recalled wanting to get away from Respondent and trying to move the chair away. The next thing Complainant recalled was Respondent's hand on Complainant's right inner thigh while Respondent said something like Complainant "wanted it" or "liked it."

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[5] The Title IX Coordinator's intake notes are in Section III.C., and Complainant's formal complaint is in Section II.A.

When asked if Respondent ever whispered in Complainant's ear, Complainant looked up and said, "Yes! Respondent whispered that I 'would like it.'" I asked, "Like what?" Complainant responded, "The smashing."

When asked what happened next, Complainant recalled getting up from the chair, feeling "kinda clumsy," and leaving the library. When Complainant got home, Complainant realized later that the math review sheet was still on the table in the library. At that point, Complainant did not care. Because Complainant was exhibiting strong emotions during our interview, the parents decided to end the interview. They stated that Complainant struggled being at school, despite the supportive measures. I let them know I may need to ask follow-up questions of the Complainant, but I would call them beforehand to provide advanced notice. Complainant did not contact me to provide additional information.

B. Respondent's Response and Perspective

1. Respondent's Written Response to the Notice of Allegations

After receiving the NOA on October 5, 2020, Respondent gave the Title IX Coordinator the following written response:

> A. I met Complainant at the beginning of the school year during our speech services. I smiled at Complainant maybe once. One time after speech, I walked with Complainant back towards our classrooms.
>
> B. I was friendly with Complainant, but not flirty. Complainant is like a younger sibling to me.
>
> C. I asked for Complainant's Snap and sent a message the same day saying, "You slay," because Complainant did well in speech. Complainant responded, "You extra."
>
> D. I touched Complainant's knee in the library because Complainant was bouncing it up and down, which shook the table. I must have used my left hand.
>
> E. I did not purposefully touch Complainant's lap or crotch, but that might have happened on accident. I doubt the librarian saw anything because I chose a table far away from the librarian so we could talk about math.
>
> F. I whispered in Complainant's ear because the librarian was walking around, but I don't remember what I said. It was probably about math.
>
> G. Complainant did not move Complainant's chair away from me during our tutoring session.
>
> H. Complainant did not leave in a rush, and I don't remember seeing whether Complainant left the review sheet in the library.

I. Complainant is making this up.

Exhibit 4.

2. Respondent's Interview

I asked Respondent to tell me about the August 21, 2020, tutoring session with Complainant in the library. Respondent said, "Nothing happened. We reviewed for the quiz. That's it." Respondent appeared reluctant to voluntarily provide more information, so I began asking open-ended questions based on Complainant's allegations. Respondent provided the following information during our interview:

- Respondent acknowledged tutoring other students in the library during the prior school year, and the Librarian approved of how Respondent conducted the sessions.

- Respondent admitted to asking Complainant on August 18 or 19, 2020, if Respondent could tutor Complainant in math. Respondent did not ask for any money as tutoring was like "community service." Respondent did not identify any specific community service project or organization.

- When asked about their Snapchat messages, Respondent said the messages were "no big deal." Respondent was being "nice" to a "freshman."

- While tutoring the "second time," Respondent touched Complainant's bouncing knee quickly, like a "tap," to stop the distracting vibrations. Respondent denied keeping a hand on Complainant's knee.

- When asked about touching Complainant's lap, Respondent reiterated it "might have happened" after touching Complainant's knee. When asked if Respondent touched Complainant's lap before or after tapping Complainant's knee, Respondent did not remember.

- Respondent admittedly did not verbally ask Complainant to stop tapping the table; instead, Respondent touched Complainant's moving knee to make it stop. Respondent did not think the quick touch bothered Complainant, and they completed their tutoring to prepare for the math quiz.

- Respondent denied intentionally touching Complainant's groin area, explaining, "That is not something I would do."

- When asked about why Respondent would whisper in Complainant's ear about math if the Librarian allowed Respondent to hold tutoring sessions there, Respondent said, "I don't remember why I whispered."

- Respondent stated they finished their review of the math sheet in preparation for the math quiz. Complainant may have left before Respondent, but there was nothing unusual about Complainant's exit, and Respondent did not notice if Complainant left anything behind.

- I provided a copy of the formal complaint for Respondent's review. Respondent laughed and said Complainant was "making it up" because Respondent did not remember it "that way."

- When asked if Respondent used the word, "smash," with Complainant, Respondent said, "I don't recall that…I wouldn't say that because that's like about sex."

- When asked if Respondent knew of any reason why Complainant would be "making it up," Respondent said Complainant was young, seemed to "like" Respondent "as more than just a tutor," and wanted an excuse to explain why Complainant failed the quiz.

- When asked if Respondent was interested in Complainant in a romantic or sexual way, Respondent said, "No."

- Respondent had "never" been disciplined in 9th or 10th grade, and Respondent claimed to be a "good math tutor."

At the end of our interview, I asked Respondent to let me know if Respondent remembered anything more about their meeting in the library on August 21, 2020. I explained I would provide advanced notice if I had any follow-up questions. Respondent did not contact me to provide additional information.

C. Witness Perspectives

1. Title IX Coordinator – Meeting with Complainant

The Title IX Coordinator provided me with a copy of the notes from the October 1, 2020, intake meeting with Complainant and Complainant's parents. I reviewed and considered these notes, which are described verbatim from the Coordinator's typed notes:

> Intake Meeting on October 1, 2020, 9:00 a.m.
>
> Parents want to know whether Respondent will be removed from school. Parents say Complainant needs help. We discussed various supportive measures for Complainant. School will not put Complainant and Respondent in same classes for remainder of fall semester and spring semester; will revisit schedules moving forward. Complainant asked to attend speech sessions at a different day and time to avoid Respondent. Telephone call with Speech Department confirmed this option. Family provided with referrals to private or school counselors.

Complainant described what happened with Respondent. Said Respondent "pretended" to tutor Complainant but "used" Complainant instead. Complainant felt violated when Complainant touched knee, leg, and crotch area. When asked, Complainant clarified Respondent touched genitals on outside of clothes, not just leg, while saying "smash," which Complainant believes means something about sex. At least it appeared that way to Complainant because Respondent was close to Complainant and touched Complainant's "private parts." Complainant exhibited anger and signs of being upset during interview. Complainant felt "stupid" for trusting older student. Didn't want to talk to anyone about it; wanted to pretend it didn't happen. But, Complainant failed math quiz because left early, didn't study after "what happened" and couldn't find the study sheet. Too embarrassed to go back to library. Too embarrassed to go back to school. Felt bad but faked being sick; parents did not know what was wrong but told school Complainant was sick.

When asked if Librarian saw what happened, Complainant raised voice and said something like, "No! If Librarian saw it, wouldn't he have done something to help?!?' (Complainant tries to hold back emotions; looks away.) Complainant shared that when later saw Respondent stand close to Riley, Complainant knew for sure Respondent was "shady" and not to be trusted, even though Riley did not believe Respondent was fake when they talked about Respondent.

Explained Title IX process to family. Their choice to file a formal complaint, and will have supportive measures regardless, but Respondent considered innocent unless evidence demonstrates responsibility. With the formal complaint, they can consider a mutual restriction on any communication between Complainant and Respondent.

Can only determine responsibility after full and fair investigation with review of evidence and investigation reports. Explained complaint and investigation process, provided copies of AR 5145.71, and recommended taking some time to think about what next steps they may want. Provided TIXC contact information, which they could use to leave a message 24/7.

Exhibit 5.

2. Title IX Coordinator – Meeting with Respondent

The Title IX Coordinator provided me with a copy of the notes from the October 6, 2020, intake meeting with Respondent.[6] I reviewed and considered these notes, which are described verbatim below:

[6] Respondent's parents were not available for the meeting with the Title IX Coordinator.

Meeting with Respondent on October 6, 2020, 8:00 a.m.

Parents could not attend meeting with Respondent due to work schedule but "trusted" Respondent to attend the meeting alone. At the meeting, they discussed various supportive measures for Respondent. School will not put Complainant and Respondent in same classes for remainder of fall semester and spring semester; will revisit schedules moving forward. Respondent did not want referrals to private or school counselors; told Respondent could change mind at any time.

Respondent did not want to talk about what happened in the library but, instead, provided a written statement based on Respondent's review of the NOA. (See statement, A-I.) Respondent insisted Complainant was "crazy" and making up a story to justify failing the quiz.

Explained the Title IX process to Respondent, including that Respondent was considered not to be responsible unless the investigation and decision-maker reviewed all evidence and determined whether Respondent was responsible for sexual harassment or fondling. Explained school can only determine responsibility after full and fair investigation with review of evidence and investigation reports. Explained complaint and investigation process, provided copies of AR 5145.71, and recommended talking to parents or having parents call me.

Respondent welcomed a mutual restriction on any communication between Complainant and Respondent. Provided TIXC contact information, which allowed Respondent to leave a message 24/7.

Exhibit 6.

3. Librarian

I met with the Librarian in the library in order to observe the layout of the library.[7] When speaking with the Librarian, I asked if the library was organized in the same way as the beginning of the school year, and he said, "Yes."

I asked if the Librarian knew Complainant, and he did not. He knew Respondent because Respondent tutored other students in the library last year after school. The Librarian stated the Respondent typically tutored at one of the tables in the back of the library. Librarian stated that Respondent was welcome to tutor there because Respondent used a "nice indoor voice."

[7] I noted that the Librarian could see all the tables but could not see clearly under the tables. I also noted that, when sitting at a table, there was sufficient room for someone to touch a person's body under the table while sitting near that person.

During our interview, I observed that the Librarian's desk faced out over the entire library. However, his view of the back tables was mostly blocked while sitting directly in front of his computer screen. When asked about hearing noise from the back of the library, the Librarian said he could not usually hear students talking that far away if they were using low voices.

I showed the Librarian a photo of Complainant from the student's cumulative file, but he did not recognize Complainant. I explained that Respondent tutored Complainant in the library on August 20 and August 21, 2020, after school. The Librarian recalled seeing Respondent in the library around that time because he thought it was odd for Respondent to be tutoring that early in the school year. He also remembered cleaning up some papers after Respondent, which was not something he had to do the year before. He did not keep those papers.

The Librarian stated he was not paying much attention when the two students were in the library because he was making sure his textbook and laptop distribution records were organized. When asked how long they were in the library, he said it was no more than 20-25 minutes, and he noticed Complainant left before Respondent.

I asked the Librarian if he saw Respondent touch Complainant's knee under the table, and he did not. I asked the Librarian if he saw Respondent touch Complainant in any way under the table, and he did not. He stated he doubted Respondent "would do that."

I asked the Librarian if he heard Complainant and Respondent use the word "smash" or "smashing." The Librarian chuckled but stated that he did not hear anyone say those words. He reiterated that he could not hear people that far away unless they were talking loudly.

4. Riley

Riley knows Complainant from middle school, and they had Algebra I together that school year. When asked how Complainant was doing in the math class, Riley said Complainant "hated" algebra from the beginning, but Complainant eventually "pulled it together" and recently did "pretty well" on a big test in September 2020.

I asked if Riley knew Respondent. Riley had seen Respondent at school and recently talked to Respondent, but Riley did not really know Respondent. I asked if Riley ever saw Complainant and Respondent together. Riley said no, but Riley recalled talking to Complainant after school a few months ago, and Complainant acted "weird" when Respondent walked by. When asked what that looked like, Riley said Complainant "muttered" something like Respondent was "fake." Riley asked how Complainant knew Respondent, and Complainant did not answer but walked away looking "irritated."

When asked if Complainant referred to Respondent as "shady," Riley did not remember that word but noted Complainant could have said "shady" because Complainant seemed not to trust Respondent. Riley did not have any more information about Complainant's interactions with Respondent.

5. Respondent's Mother

Respondent's mother called me to relay some information. During our call, she explained that Respondent had tutored peers and younger students since 7th grade, especially in math. She noted that Respondent tutored "all types of students" without any "problems like this," and she wanted me to interview other people who received tutoring from Respondent. I asked if any of those people had any information related to this matter, and she responded, "Not that I know of." I thanked her, but I explained my role was to gather directly related and relevant evidence to the allegations against Respondent.

While on the telephone, I asked Respondent's mother to describe how Respondent behaved at home on or around August 21, 2020. She could not remember anything specific or out of the ordinary because that was "a long time ago." However, she said she did not know that Respondent was tutoring Complainant until they received the NOA. I asked if Respondent normally provided tutoring so early in the school year, and she responded, "No…that does seem awfully early in the year, but they were preparing for a test or something." She stated her "child helped, and did not hurt," Complainant.

6. Complainant's Algebra Teacher

I interviewed Complainant's math teacher. The teacher said Complainant was an attentive student but had a "rocky start" in the beginning of the semester. Complainant failed the first quiz, and when the teacher looked at Complainant's errors on the quiz, she noted Complainant did well on the introductory concepts from Chapter 1, but struggled with the topics from Chapter 2.

When asked if the teacher knew Respondent, she did not recall having Respondent as a student, but she heard Respondent tutored students in algebra. The teacher did not know of any students who were tutored by Respondent. The teacher noted it was "odd" for a student or family to seek out a tutor in the first few weeks of class before taking any assessments, quizzes, or exams. She stated neither the Complainant nor the Complainant's parents spoke with her about needing a tutor. The teacher provided me a copy of the review sheet for the first quiz in class. **Exhibit 7.** The teacher noted Complainant had improved in algebra.

D. Documents or Other Evidence

1. Math Review Sheet

I reviewed a copy of the Algebra I Review Sheet, dated August 10, 2020, and noted it was a study guide for the first quiz on August 24, 2020. The Review Sheet was set up to review Chapters 1 and 2 of the text book. **Exhibit 7.**

2. Attendance Reports

The Attendance Reports for Complainant indicated four days of absence due to illness from August 25 through August 28, 2020. **Exhibit 8.**

3. School Calendar and Bell Schedule

The District calendar indicated that Complainant and Respondent started the 2020-21 school year on Wednesday, August 5, 2020. The Bell Schedule indicated that school started at 8:30 a.m. and ended at 2:30 p.m. **Exhibit 9.**

IV. SUMMARY OF DISPUTED AND UNDISPUTED RELEVANT EVIDENCE[8]

The main issue in dispute is what occurred between Respondent and Complainant in the library after school on Friday, August 21, 2020. However, their interactions before August 21, 2020, may provide some relevant evidence for the Decision-Maker about the nature of the relationship between the Complainant and Respondent. Below, I have summarized some of the material issues and expressed whether those issues are disputed, undisputed, or disputed in part.

A. Interactions between Complainant and Respondent between August 5-19, 2020

1. <u>Undisputed</u> Relevant Evidence

- The 2020-21 school year began on August 5, 2020. Complainant and Respondent did not meet each other until their first pull-out speech session on Friday, August 7, 2020.

- Complainant and Respondent had classes near each other and would walk the same route to and from the speech classroom.

- Respondent, a 10th grader, was friendly with Complainant, a 9th grader, by smiling at Complainant, walking with or near Complainant to the speech classroom, and sometimes waiting for Complainant to walk back towards their classrooms.

- On August 17, 2020, Respondent asked for Complainant's Snapchat handle, and Complainant provided it to Respondent. Later that day, Respondent sent Complainant a message saying, "You slay." Complainant responded, "You extra." Both agreed that "you extra" meant Respondent was "too much" or "exaggerating." The parties generally agreed that their Snapchat messages were supportive of each other.

- Complainant struggled in Algebra I. Sometime around August 18 or 19, Respondent heard Complainant complain about math and offered to tutor Complainant after school in the library. Complainant said yes. Respondent helped Complainant with algebra and an

[8] Section IV and V of this Report are provided to help the Decision-Maker synthesize the evidence. These sections are not required by the Title IX regulations.

upcoming math quiz in the library on August 20, 2020, for about 20 minutes. They decided to meet again on August 21, 2020, to finish going over a review sheet before Complainant's first quiz on August 24, 2020.

2. Disputed Relevant Evidence

- The Parties disagree about whether Respondent was flirting with Complainant.
  - Complainant felt Respondent was flirting by smiling, walking together to and from speech class, asking Complainant for the Snapchat handle, and sending a message to Complainant saying, "You slay," which Complainant interpreted as looking good or "hot."
  - Respondent denied flirting with Complainant because Complainant was like a younger sibling. Respondent said, "You slay," because Complainant did well in the speech session on August 17, 2020.
- Complainant noted that Respondent was not close enough to observe Complainant's speech session or notice whether Complainant did well in speech.

B. Tutoring Arrangement and First Session on August 20, 2020

The parties do not dispute anything about the first tutoring session on August 20, 2020. Specifically, they both agreed that tutoring session lasted about 20 minutes. They worked on the Algebra review sheet for the upcoming quiz, and nothing inappropriate occurred.

C. Second Tutoring Session and Incident on August 21, 2020

1. Undisputed Relevant Evidence

- The parties agreed to hold a tutoring session in the library after school on August 21, 2020, and Respondent chose a round table far away from the Librarian.
- Other than the Librarian, no one else was in the library during the tutoring session. The Librarian was mostly working on the computer during that time.
- A visual inspection of the library revealed that there was enough room for a person to touch another person's leg or lap if sitting next to them at a round table.

- Respondent touched Complainant's right knee under the table with Respondent's left hand, said something to Complainant, and also whispered something to Complainant.

- Respondent whispered something to Complainant.

- Complainant left the library before Respondent.

- The word "smash" is a common slang term that refers to sexual activity.

2. Disputed Relevant Evidence

A review of the evidence indicates that the parties provided different accounts about (a) what Respondent said to Complainant immediately before and while touching Complainant; (b) if the touching of the knee was sexual in nature; (c) whether Respondent intentionally or accidentally touched Complainant's thigh, inner thigh, and/or groin area; and if so, was the touching of the groin area for sexual gratification; and (d) if the touching was welcome or unwelcome to Complainant;

- (a) What did Respondent say to Complainant before and while touching Complainant?
    - *Relevant Evidence from Complainant*:
        - Respondent told Complainant they "should smash" while placing a hand on Complainant's knee.
        - Complainant did not tell parents that Respondent used the word smash.
        - Complainant described Respondent using the word smash in the intake meeting with the Title IX Coordinator.
        - Complainant reported that Respondent said they should "smash" in the formal complaint.
        - Complainant recalled Respondent used the word smash more than once during our interview.
    - *Relevant Evidence from Respondent*:
        - Respondent did not mention using any sexual words or the word "smash" with Complainant in Respondent's written response after reading the Notice of Allegations.

        - Respondent did not address Complainant's specific allegations with the Title IX Coordinator.

        - During our interview, Respondent regularly stated, "I don't recall that," and "I wouldn't say that because it is sexual."

    - *Relevant Evidence from Witnesses*:

        - The Librarian did not hear Complainant or Respondent use the word "smash" or "smashing." The Librarian noted that he would not be able to hear them unless they were using loud voices, which they were not doing.

        - In or around the end of August 2020, Riley said Complainant muttered something like Respondent was "fake." When Riley asked how Complainant knew Respondent, Complainant did not answer and walked away looking irritated. When asked if Complainant referred to Respondent as "shady," Riley could not remember that word but noted Complainant could have said "shady" because Complainant seemed not to trust Respondent.

- (b) Was Respondent's touching of Complainant's knee sexual in nature?

    - *Relevant Evidence from Complainant:*

        - Complainant told Complainant's parents that Respondent said things that she did not understand, Respondent touched Complainant's right knee, and then "slid" a hand up Complainant's leg to "the private area."

        - In the formal complaint, Complainant said that after Respondent said algebra was "messed up," the Respondent placed a hand on Complainant's right knee and said they should "smash." When Complainant looked confused, Respondent's hand moved up Complainant's leg and grabbed Complainant's groin area while saying, "You know, smash." Respondent also said, "You'll like it, I promise."

        - During our interview, Complainant did not understand what Respondent was saying when Respondent placed a hand on Complainant's knee, but Respondent said "smash" more than one time. Complainant clearly remembered that Respondent "kinda squeezed" Complainant's groin area around the same time as using the word smash.

- Complainant pointed out that Respondent "flirted" before tutoring Complainant, Respondent asked for Complainant's Snapchat handle before offering to provide math tutoring, and Respondent told Complainant, "You slay," which was perceived as a compliment about how Complainant looked.

  - *Relevant Evidence from Respondent:*

    - Respondent consistently explained the reason for touching Complainant's knee was to stop the knee from bouncing.
    - Respondent did not verbally tell Complainant to stop tapping a knee before touching Complainant's knee.
    - When asked if Respondent used the words "smash" with Complainant, Respondent said, "I don't recall that…I wouldn't say that because that's like about sex."
    - When asked, Respondent denied being sexually interested in Complainant.

- (c) Did Respondent touch Complainant's thigh, inner thigh, and/or groin area on accident or on purpose? If the touching of the groin was on purpose, was the touching for sexual gratification?

  - *Relevant Evidence from Complainant:*

    - Complainant described Respondent's hand touching Complainant's "private area" when telling Complainant's parents what happened in the library.
    - Complainant described in the formal complaint that Respondent quickly moved a hand up Complainant's inner thigh and "grabbed" Complainant's "groin area" on the outside of Complainant's jean shorts. Complainant described Respondent's hand quickly moving up Complainant's leg and grabbing Complainant's "groin area" in the formal complaint.

- During the interview with the investigator, Complainant said Respondent "kinda squeezed" Complainant's groin area and gestured to the lap or crotch area.
- Complainant did not know what "smash" meant at the time, but Complainant described that Respondent said it before touching Complainant's groin area.

o *Relevant Evidence from Respondent:*

- Respondent stated that Respondent might have accidentally touched Complainant's leg, thigh, or groin area.
- When asked if Respondent touched Complainant's lap before or after tapping Complainant's knee, Respondent did not remember.
- During our interview, Respondent denied intentionally touching groin area by saying, "That is not something I would do."
- When asked if Respondent used the word, "smash," with Complainant, Respondent said, "I don't recall that…I wouldn't say that because that's like about sex."
- Respondent laughed when reviewing Complainant's formal complaint and stated Respondent did "not remember it" the way Complainant described what happened on August 21, 2020.
- When offering a reason why Complainant would "make up" the allegations about Respondent's touching, Respondent claimed Complainant was young, liked Respondent, and wanted an excuse to explain why Complainant failed the algebra quiz.
- When asked, Respondent denied being sexually interested in Complainant.

o *Other Relevant Evidence:*

- The Librarian, the math teacher, and Respondent's mother all noted that it was unusual for students to use tutors so early in the school year.

- Respondent offered to tutor Complainant.

➢ (d) Was Respondent's touching of Complainant welcome or unwelcome?

- *Relevant Evidence from Complainant:*
  - There is some evidence that Complainant "liked" Respondent and thought Respondent was "kinda hot" before August 21, 2020. However, after August 21, 2020, there is evidence that Complainant described Respondent as "fake" and "shady."
  - Complainant did not seek out additional tutoring from Respondent after Complainant failed the algebra quiz on August 24, 2020.
  - While explaining to Complainant's parents what happened on August 21, 2020, Complainant described leaving the library "quickly."
  - During the Title IX intake meeting, Complainant described leaving early, not studying after "what happened" and not able to find the study sheet, but being too embarrassed to go back to library.
  - In the formal complaint, Complainant described standing up, faltering while moving the chair, and leaving quickly without taking the review sheet.
  - During our interview, Complainant described getting up in a "clumsy" way and leaving the library without the math sheet.
  - Complainant missed four days of school shortly after the alleged incidents with Respondent and after failing the math quiz.

- *Relevant Evidence from Respondent:*
  - Respondent did not provide any evidence that Complainant wanted to be touched by Respondent.
  - Respondent admitted that Complainant may have left the library before Respondent, although not because something bad happened.

- In Respondent's written response, Complainant did not leave in a rush, and Respondent did not remember seeing whether Complainant left the review sheet in the library.

- Respondent did not talk about the allegations with the Title IX Coordinator.

- *Other Relevant Evidence:*

  - The Librarian recalled "cleaning up" after Respondent, and it was not normal for Respondent to leave a mess. The Librarian did not recall exactly what was left behind.

  - The algebra teacher noted that Complainant did okay on the content from Chapter 1 but not on the content from Chapter 2.

V. CREDIBILITY CONSIDERATIONS

During the investigation, I reviewed the consistency or inconsistency of each party's version of events. I observed the following:

- Complainant described Respondent's actions on four different occasions: (1) report to parents; (2) meeting with Title IX Coordinator; (3) written formal complaint; and (4) investigation interview. ***Observations.*** Complainant provided substantive answers to interview questions and included significant details about what occurred, especially related to the incident in the library on August 21, 2020. Complainant displayed minimal inconsistencies.

- Respondent discussed the Complainant's allegations on two occasions: (1) in the brief written response to the NOA; and (2) during the investigation interview. ***Observations.*** Respondent did not provide many details about what occurred in the library on August 21, 2020. In response to several questions about significant issues, Respondent often stated, "I don't remember." Sometimes Respondent said, "It could have happened." Respondent consistently denied romantic or sexual interest in Complainant, but Respondent admitted to being friendly and asking for Complainant's Snapchat. Respondent claimed that the phrase, "you slay," was a compliment about how Complainant did in the speech session.

When Respondent provided substantive answers to my questions, Respondent displayed minimal inconsistencies, but I noted Respondent also provided minimal details in response to Complainant's serious allegations. Respondent consistently stated or implied that Complainant was motivated to lie to justify why Complainant was failing algebra or because Complainant liked Respondent. However, I noted that Respondent did not know if Complainant was failing algebra at the time Complainant filed the formal complaint because they no longer were in a tutoring relationship. Respondent's belief that Complainant "liked" Respondent was not supported by any examples after their interaction in the library on August 21, 2020.

VI. CONCLUSION OF INVESTIGATION

On October 29, 2020, I provided this Final Investigative Report to the Complainant/parents and Respondent/parents for their review, inspection, and comment via the secure dropbox. While the parties received 10 calendar days to review and/or comment on the Report, neither party nor their parents submitted a written response to this Final Investigative Report.

This concludes the investigation phase of the Title IX Complaint Process. This Report and all Exhibits have been submitted to the Decision-Maker on November 9, 2020.