



# Lessons Learned: OCR Investigations & Resolutions

3rd Annual Mid-Year Conference

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# BACKGROUND ON OCR CASE PROCESSING

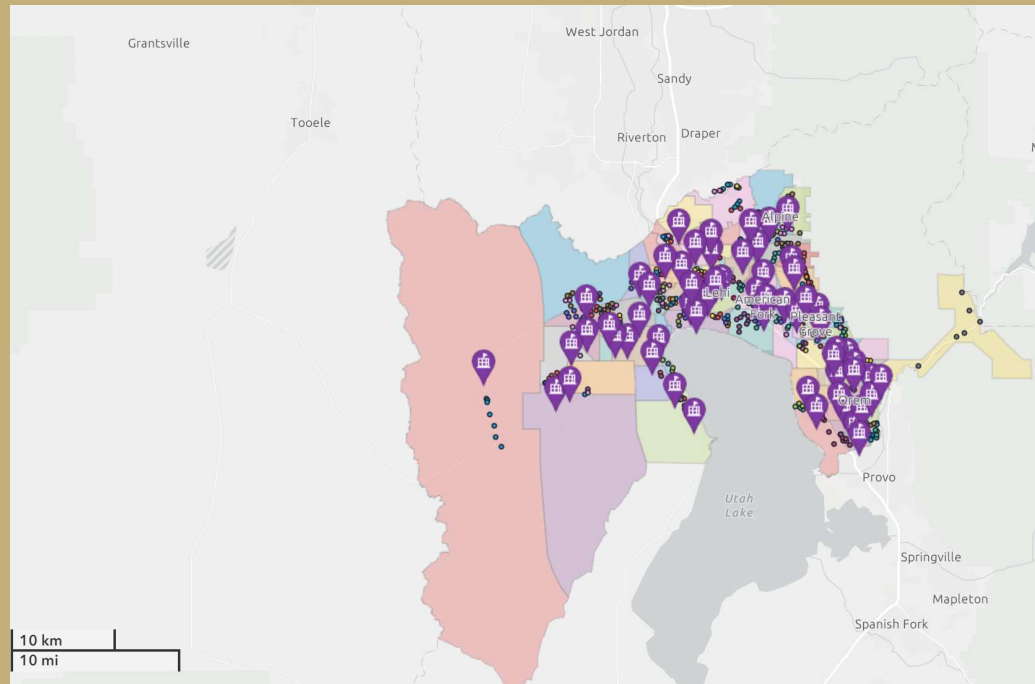
2024 NACCOP 3RD ANNUAL MID-YEAR CONFERENCE



# Sexual Harassment including Sexual Violence

2024 NACCOP 3RD ANNUAL MID-YEAR CONFERENCE

## Alpine School District (Utah)





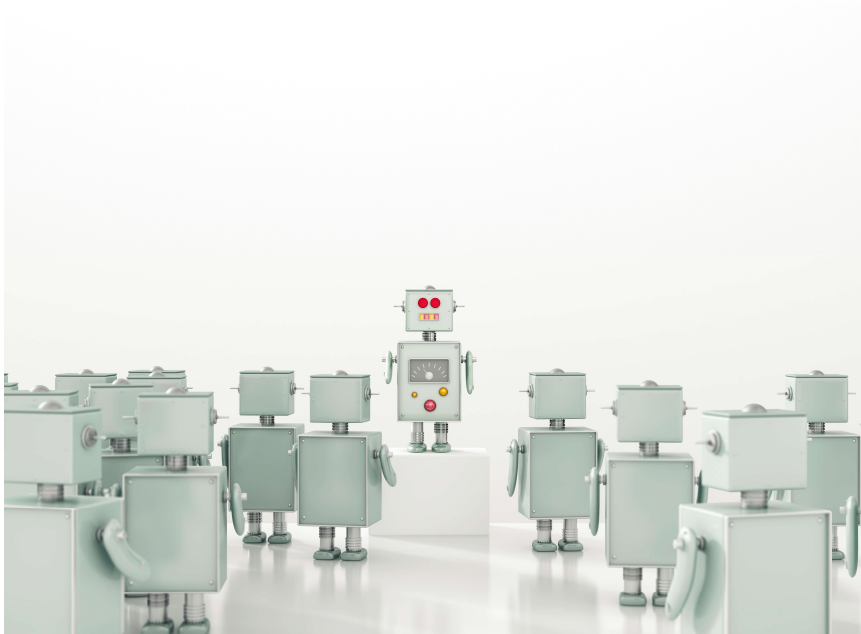
# BACKGROUND

Civil Rights Data  
Collection (CRDC)

vs.

Clery Annual  
Security Report(ASR)

# Violations: Title IX Generally



1. Title IX Coordinator didn't coordinate
2. Failed to notify employees and students of Title IX Coordinator
3. Failure to adopt and publish grievance procedures

*“As we investigated we heard the same story again and again . . . [I]t was eerie how similar the stories were, though most ended early with the students transferring or quitting.”* Principal X

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## Failure to Investigate

4. Failed to take appropriate steps to investigate complaints and reports of employee-to-student sexual assaults, including by referring such matters to law enforcement and other agencies without fulfilling the District’s Title IX obligations.
5. Failed to take appropriate steps to investigate complaints and reports of student-to-student sexual assault, including determining whether the assaults created a hostile environment for the students.

*“Some of the school administrators OCR interviewed said that they told harassed students that counseling or social worker services were available or that the students met with school counselors, but the District produced no records to confirm this.”*

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## Failure in Response

6. The District failed to provide interim measures to students alleged to have been sexually assaulted by employees and students.
7. The District failed to take effective steps in response to substantiated sexual assaults to prevent recurrence of the harassment, eliminate the hostile environment, and remedy its effects.
8. The District failed to consistently notify harassed students or their parents of the outcomes of investigations of reported sexual assaults.

# Concerns



1. Off-Campus sexual harassment
2. Failed to create or maintain sufficient records of its responses to complaints, and
3. Did not provide adequate training



Allegation 1:  
Failure to Respond  
to Possible Sexual  
Harassment

Allegation 2:  
Separation of  
students based on  
sex without  
justification

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## Nash County Public Schools (NC) Nash Central High School



# The Instagram Posts



Asst. Principal requested information about an Instagram account that had “mostly negative comments” that included “sexual content and bullying.”

School administrator emailed a District computer technician names of students who may be responsible for the Instagram account.

Feb. 10, 2022

August 30 or 31, 2022

Sept. 2, 2022

Sept. 12, 2022

Instagram poster writes that he “might force one of the freshman bitches to have sex” with him.

- Students claim they told the school.
- The school claims they had no knowledge of this post but were aware of other posts that were “inappropriate and inflammatory” but “not threats of sexual assault or rise to the level of sexual harassment.”

An all-girls assembly is held.

- The school claimed they were not aware of the post until after the All-girls assembly was held.

# The Dress Code



- September 1, 2022: An Assistant Principal emailed students to remind them of the District’s dress code.
- The dress code “prohibits clothing that is substantially disruptive, provocative, or obscene, and identifies examples of prohibited attire, such as clothes with lewd messages; clothes that are see-through, excessively short or tight; sagging pants; strapless shirts; and clothes that expose one’s undergarments, midriff or cleavage . . . The School’s handbook similarly prohibits clothing that is disruptive, suggestive, or revealing, including short shorts or skirts, bare midriffs, strapless shirts, halter tops, sagging pants, bandanas, headbands, and tank tops, muscle shirts - Males.”
- September 12, 2022: The school had an all-girls assembly. Intended to address “female issues of non-compliance” with the dress code and reports regarding “inappropriate [anonymous] messages [on] social media” (supposedly not the August 2022 post because they claimed they knew nothing of it). It was also intended to “empower female students” and remind them to comply with the dress code.

OCR letter

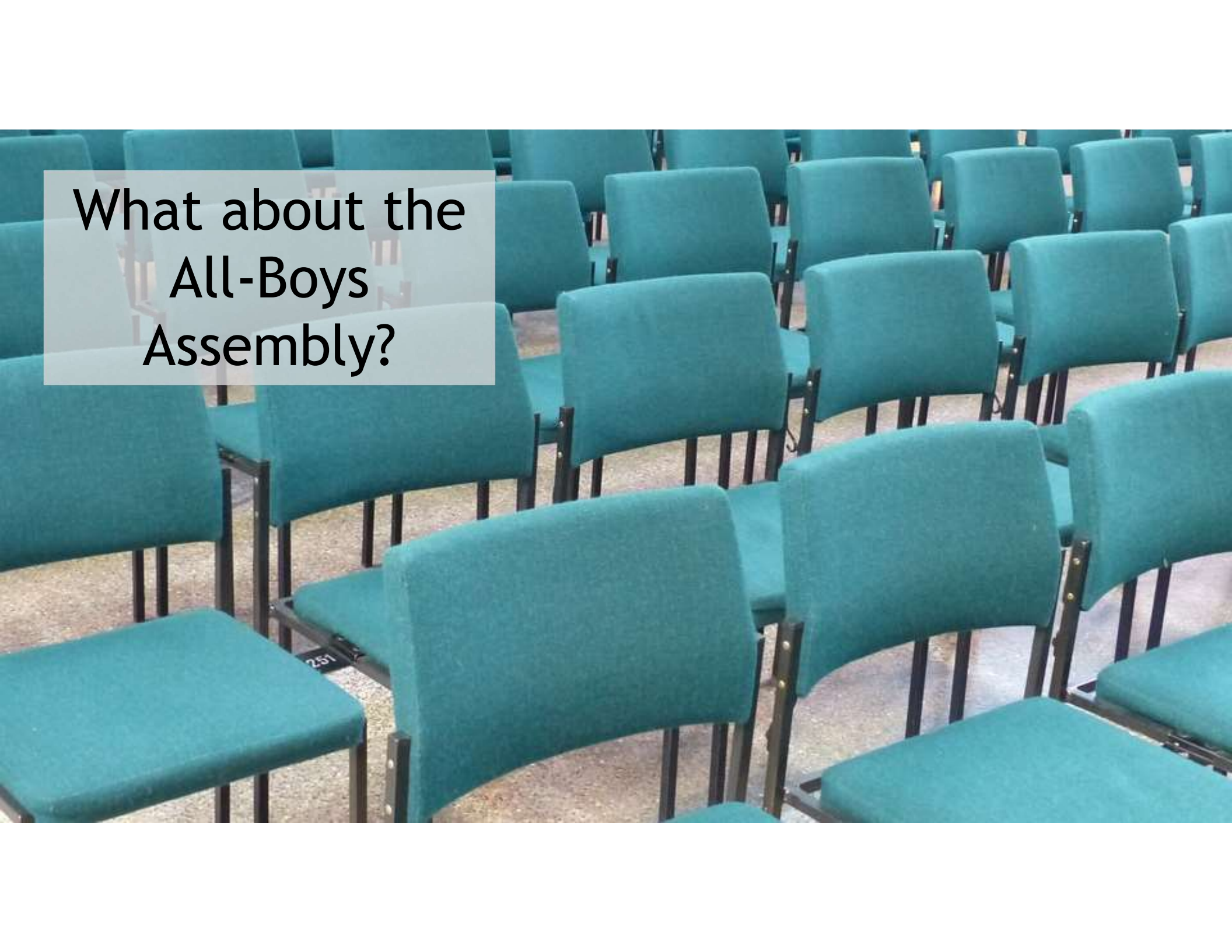
# The All-Girls Assembly



- “Don’t come to us” about social media concerns if “you don’t have proof of who’s writing” the post. An assistant principal explained, “We don’t have time for the drama.”
- “[Staff] should not have to spend countless hours telling [the female students] to come to school appropriately dressed.”
- “Shorts are too short; no skin on their stomach should be showing.”
- “Save the showing of [their] bodies for later because [they will] be the same one that comes to [school staff] talking about ‘look what they put on the [redacted content] [social media] page.’”
- The female students are “opening the door for [them]selves.”
- With respect to attire, an assistant principal stated she was “going to protect [her]self, which is what [the female students] should be doing”; and that the female students gave male students “everything they want to see in a female” and then “wonder why they disrespect you.”
- They warned the female students not to hang out or vape in bathrooms and noted that “we’re coming for you ladies;” and advised the female students not to fight, saying “Guys instigate stuff with you all because they want to see a cat fight and you all are so naive you give them what they want.”
- After admonishing the students, the staff told them to let them know if they knew of anyone who posted inappropriate posts.

OCR letter





What about the  
All-Boys  
Assembly?

# OCR's Analysis



- The district did not respond as required to notice of possible sexual harassment occurring on social media that involved students at the School and may have impeded students' access to the school's education program and activities.
- The student-focused response was limited to the girls-only assembly held on September 12, 2022, during which staff made comments that appeared to blame female students for the conduct at issue.
- The District appeared to defer any investigation to law enforcement.
- No evidence that the District investigated or responded to any concerns raised regarding the fall 2022 post or any other social media post that included sexually harassing content; considered the need for supportive measures in response to any such social media post; or directed students and parents to its Title IX grievance procedures or Title IX coordinator in response to concerns raised regarding any such social media post.

OCR letter

## OCR's Analysis, continued



- The District separated students based on sex without justification by holding an assembly only for female students to address compliance with the dress code; and told female students during the assembly that they should "save the showing of [their] bodies for later" and that dressing certain ways "opened the door" to boys disrespecting them.
- OCR did not obtain evidence that the District formally planned or held a boys-only assembly or otherwise addressed male students regarding the dress code despite the fact that half of the dress code disciplinary incidents from the past two school years involved boys.
- OCR is concerned that the District's stated purpose for holding the girls'-only assembly included an interest in addressing the potentially harassing on-line posts, which bore no actual relationship to the girls' dress code compliance.

OCR letter

# Resolution Agreement



- Revise the dress code so it does not discriminate on the basis of sex.
- Provide Title IX training to all personnel.
- Review reports provided to the School from September 2022 to the present date regarding alleged sexual harassment. Consistent with Title IX and the District's grievance procedures, the District will determine whether there is a basis to investigate these reports and promptly conduct an investigation, as appropriate.
- Assess the need for supportive measures to students and send a notification to all students and parents/guardians at the School explaining their right to file a complaint through the District's Title IX grievance process and providing a link to its Title IX grievance procedures.



# Higher Education Implications - Social Media



## Institutional Social Media Accounts

- Social media accounts that are institutional accounts are part of the school's programs and activities.
- Who administers these accounts?
- Do the account administrators understand their reporting obligations?
- You should be offering supportive measures, investigating, and assessing any needed adjustments to prevent reoccurrence with that site.

## Non-Institutional Social Media Accounts

- You are not responsible for monitoring non-institutional accounts such as “Buy and Sell” or “Barstool Sports.”
- If a student is possibly being harassed or threatened because of sex and it is related to their status as a student, you should be offering supportive measures and investigating to the extent possible.
- Even if anonymous or a non-student, you should be offering supportive measures.



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## Higher Education Implications - Dress Codes

- Do you have any dress codes?
  - For example, fitness centers, student worker positions, internships, clinicals
- What are the expectations? Are they consistent?
- Who administers the policy/policies?
- Does anyone review reports and responses to ensure there is no sex discrimination?

# TAFT COLLEGE- BACKGROUND (OCTOBER 2023)

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## Background Continued

- She came out to a professor of [redacted content] (Professor 1), including telling him that she used plural pronouns. She did so because she alleges Professor 1 had made “problematic and heteronormative statements” during class about sex and gender.
- The Student stated that in [redacted content] she also informed the Director of the [redacted content] Program (the Director) of her preferred pronouns. According to the Student, the Director insisted that she would notify faculty members.
- The Student told OCR that faculty and staff members continued to refer to her by her previous male name and pronouns (misgendered her) on an almost a daily basis, sometimes several times a day, for over a year from [redacted content] until she graduated in [redacted content].
- Program faculty were also misnaming the Student and using incorrect pronouns to refer to her, even though the Director had assured the Student that she would speak with the faculty to inform them of her correct pronouns. The Student also told the Advisor that [redacted content] Program faculty neglected to “even try to use [the Student’s] proper pronouns.”
- (Professor 3) responded by throwing up his hands and stating that he was “too old to deal with” the [redacted content]’s request.
- The Director also asked her why she cared so much about these issues and suggested that maybe the College was not the right place for the Student, and that she should consider becoming an activist.
- The Student told OCR that she met with the Dean on a number of occasions between [redacted content] and [redacted content] and complained that she was being misnamed and misgendered by College faculty and staff, specifically mentioning Professor 1, Professor 2, and the Director. The Student stated that she asked the Dean how to file a complaint, and that the Dean responded that it was not in the Student’s best interest to file a formal complaint at that time and that the Student should wait until she graduated because members of the [redacted content] Program might retaliate against her.
- Professor 4 inadvertently misgendered the Student when Professor 4 started to say “he,” then quickly corrected herself, such that it came out as “he-she.” The College stated that the Student told Professor 4 that she was leaving class because she did not feel well and did not mention Professor 4’s accidental misgendering. The College reported that there was no further follow-up to this incident.





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## Allegations-Harassment on the Basis of Gender Identity

OCR investigated the following issues:

- 1) Whether employees of the College discriminated against the Student on the basis of sex by repeatedly referring to the Student by the incorrect name and pronouns and referring to transgender and non-binary individuals or issues in a derogatory manner in the presence of the Student, other students, and [redacted content], and whether the College failed to respond promptly and effectively to notice of this alleged harassment; and
- 2) Whether the College failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination.

**Issue 1: Whether employees of the College discriminated against the Complainant on the basis of sex by repeatedly referring to the Complainant by the incorrect pronouns and name and referring to transgender and non-binary individuals or issues in a derogatory manner in the presence of the Complainant and other students and [redacted content], and whether the College failed to respond promptly and effectively to notice of this harassment.**

- The Student told OCR that in [redacted content], she came out to College faculty, including notifying them of her new female name.
- The Student stated that thereafter, on average, College employees called her by her previous male name and/or male pronouns on an almost a daily basis, sometimes several times a day, for over a year from [redacted content] until she graduated in [redacted content].
- The Student provided details of more than a dozen specific incidents during which seven different College staff and faculty members referred to her by her previous male name and/or with male pronouns. The Advisor also told OCR that it was her impression that the Student was being called by her prior male name and male pronouns every day.
- The Student stated that she told the Dean and the Director on a number of occasions that she was being misnamed and misgendered by College faculty and staff. The Advisor’s account was consistent with the Student’s account in this respect as well. The College told OCR that it had no notice of this alleged sex-based harassment; however, the College also stated that it was aware of three incidents during which two [redacted content] Program faculty members “inadvertently” referred to the Student using male pronouns or her previous male name, including one incident which occurred after the Director, Dean, and Professor 2 had met to discuss “ways to ensure that they were using the Student’s preferred name and pronouns.”

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**“OCR was concerned that College employees also may have harassed the Student on the basis of sex, including sex stereotypes, in two respects...”**

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First, the evidence raised a concern that the Director criticized the Student’s pronoun choice and provided program advice that differed based on sex by telling the Student that plural pronouns were “invalid” or legitimate only among members of the LGBTQ community, and that maybe the College was not the right place for the Student.

Second, OCR was concerned that employees harassed the student for her alleged lack of conformity with female sex stereotypes. For example, the Student reported Professor 2’s remark that when she “looks at the Student,” all she sees is the Student’s “physical appearance” and the Advisor’s statement that the Student had reported a faculty member telling the Student that they would not refer to the Student with female pronouns because she did not look “feminine enough.”

The Student stated that these incidents made her feel humiliated, embarrassed, and dismissed and negatively impacted her education because she left class and did not return to avoid being misgendered again on some occasions, such as in Professor 4’s class on [redacted content].



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## Issue 2: Whether the College failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination.

- Based upon the evidence gathered to date, OCR identified a *compliance concern* that the College may not have provided adequate notice to students, staff, and faculty of how to make a complaint of sex-based harassment under Title IX and may have failed to adequately notify the College community of its Title IX Coordinator and how to contact this person.
- The College's policy for reporting allegations of sex-based harassment during the 2018-2019 and 2019-2020 academic years, AP 3435, did not identify the Title IX Coordinator and *seemed to indicate that only allegations involving unwanted conduct of a sexual nature could be reported to the College's Title IX Coordinator, and not allegations of harassment based on sex, gender, gender identity, or gender expression.*

# Take Aways



- Ensure that Title IX Policies and Grievance Procedures comply with the Title IX regulation at 34 C.F.R. Part 106 and are cross-referenced, linked, internally consistent, and do not contain conflicting or contradictory information
- Clarify that harassment based on sex includes harassment based on sex stereotyping and that refusing to use (or repeatedly misusing) a student's preferred names and pronouns may constitute harassment based on sex that could create a hostile academic environment under Title IX
- Educate faculty and staff on using correct pronouns
- Consider adopting a process for community members to self-disclose preferred names and pronouns
- Integrate option for preferred names to be a field in registration materials that link to class rosters
- Ensure the institution's website makes it clear of how to complain, to whom, and for what (including for non-sexual acts of harassment or discrimination)
- Ensure resource information is substantive and readily available in a centralized way on the website and in hard copy





GROUP DISCUSSION





# Session Evaluation

1. Select the “Click Here to Evaluate” button in “My Schedule”



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Click Here to Evaluate



2. Or, visit <https://www.surveymonkey.com/r/NACCOPMidYear2024> to evaluate this session.

# Sources



- **General**

- OCR Case Processing Manual: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>
- CRDC 23/24 Questions: <https://www2.ed.gov/about/offices/list/ocr/docs/2023-24-crdc-qa.pdf>

- **Alpine School District**

- Letter: [https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08205001-a.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08205001-a.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)
- Resolution Agreement: [https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08205001-b.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08205001-b.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

- **Nash County Public Schools**

- Letter: <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11221543-a.pdf>
- Resolution Agreement: <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11221543-b.pdf>

- **Taft College**

- Letter: <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09212010-a.pdf>
- Resolution Agreement: <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09212010-b.pdf>