

IN THE MATTER OF COMPLAINT  
AGAINST WHITNALL SCHOOL DISTRICT

Case No. 23-008

Respondent.

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**AMENDED FINAL DECISION<sup>1</sup>**

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1. The Crime Victims Rights Board (the “Board”) finds that the complainant X (on behalf of her daughter Y)<sup>2</sup> has shown by clear and convincing evidence that the Whitnall School District (“Whitnall”) violated Y’s right as a crime victim.

**BOARD PROCEDURE**

2. X filed a complaint with the Board on May 31, 2023.
3. Upon receipt of the complaint, the Board contacted the Department of Justice, Office of Crime Victim Services, Victim Resource Center (VRC), which verified that the substance of the complaint had been presented to the VRC and that the VRC had completed its action under Wis. Stat. § 950.08(3). *See* Wis. Admin. Code CVRB § 1.05(1), (4).

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<sup>1</sup> This decision replaces the earlier version dated January 1, 2025. Paragraphs 35 and 63 were rewritten to more accurately reflect the Board’s determination.

<sup>2</sup> This final decision anonymizes the parties involved to protect their privacy.

4. The Board gave a copy of the complaint to Whitnall and invited it to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5). Whitnall, through counsel, filed a response dated September 5, 2023.

5. The Board made a probable cause determination at a meeting on March 27, 2024. *See* Wis. Admin. Code CVRB § 1.05(6).

6. In making the probable cause determination, the Board considered all relevant information, including the complaint and response. *See* Wis. Admin. Code CVRB § 1.05(7)(a)–(c).

7. The Board notified the parties and the VRC of its conclusions through the issuance of this probable cause determination. *See* Wis. Admin. Code CVRB § 1.05(8).

### **PROBABLE CAUSE DETERMINATION**

8. The Board found probable cause that Whitnall violated Y’s right under Wis. Const. art. I, § 9m(2)(f) to “reasonable protection from the accused throughout the criminal and juvenile justice process”; and second, the right under Wis. Const. art. I, § 9m(2)(c) to “timely disposition of the case, free from unreasonable delay,” *see also* Wis. Stat. § 950.04(1v)(k).

## INVESTIGATION

9. The Board requested additional information from Whitnall regarding the allegations on which probable cause was found, and Whitnall provided a written response dated July 8, 2024.

## FINDINGS OF FACT<sup>3</sup>

10. The Board's evidentiary standard for resolving disputed factual questions is the "[c]lear and convincing evidence" standard. "Clear and convincing evidence' means evidence which satisfies and convinces the Board, because of its greater weight, that a violation occurred." Wis. Admin. Code CVRB § 1.07(7).

11. The burden of proof is on the complainant. This burden of proof is very important and can be the deciding factor in the Board's resolution of factual disputes. Where the evidence on a particular factual question is equally believable or plausible, the effect of the burden of proof is that the Board must find that the complainant failed to prove the point by clear and convincing evidence.

12. The Board finds the following facts.

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<sup>3</sup> Unless otherwise described, the facts described in this section summarize uncontested facts derived from the Complainant's complaint, Respondent's response, and the supplemental materials obtained during the Board's investigation.

13. X filed a complaint on behalf of her daughter, Y, a minor student at Whitnall.

14. X alleges that sometime in the first half of November 2022, another child in Y's class—Z—intentionally touched Y's thigh and breast without her consent.

15. X alleges that, after the class ended, Z threatened to harm Y's friends and family if Y told anyone about the incident.

16. A few days later, still around mid-November, Y met with two Whitnall staff members to discuss the incident. X alleges that Y told the two staff members that Z had intentionally touched her thigh and breast without her consent.

17. A later statement by one of these staff members recounting this meeting says that Y told them that Z's conduct "could've been an accident but the situation still made her feel uncomfortable." The other staff member also gave a statement later that said Y described the incident as "an accident."

18. The two staff members did not report this conversation with Y to any other Whitnall staff or to Y's parents. Instead, they allegedly told Y that she should set boundaries with Z and implied that she should personally tell the teachers of classes she shared with Z about the incident.

19. Y had a conversation with the teacher present in the classroom at the time of the incident with Z, Stuart White, about the incident. This

conversation occurred around the same time as when Y reported the incident to the two staff members. White relayed some version of Y's story to the Whitnall principal the same day that he was told.

20. A later statement by the teacher asserts that he told the principal about the incident the day it occurred, including telling the principal that there had been "inappropriate touching of [Y's] chest."

21. Around this time, the Whitnall principal did not relay Y's allegations to other Whitnall staff, the police, or Y's parents.

22. About a month later, in mid-December 2022, X learned about the alleged incident from Y. X immediately contacted the Whitnall principal and school board about it.

23. X and Y met with the principal on December 15, 2022, to discuss the incident. X shared her concerns about the lack of an investigation and reporting to the police and said Y would not attend school until something was done. The next day, the principal shared the option of creating a "separation agreement" to keep Y and Z apart, in separate classes.

24. The next day, December 16, 2022, X and Y met with a police officer to discuss the incident. The police officer also interviewed Z that same day; Z admitted to touching Y's breast on a different occasion but denied that it was intentional. He also admitted that he may have touched Y's thigh on the day in question, but he asserted that any such contact would have been accidental.

25. Shortly thereafter, Whitnall put into place a written separation agreement designed to keep Y and Z apart. Z allegedly violated its terms on multiple occasions over the next several weeks.

## **II. Whitnall's response to the complaint.**

26. Whitnall acknowledges that Y met with two school staff on November 18, 2022, to discuss an incident that occurred between her and Z. However, the two staff members allege that Y told them Z had accidentally—not intentionally—touched her chest. Neither staff member allegedly believed an assault had occurred, based on what Y told them and their prior history of recent meetings with Y. They allegedly did not believe that further investigation or a report to law enforcement was necessary.

27. Whitnall also acknowledges that X contacted the principal on December 14, 2022, and informed him that Y had told X that Z intentionally touched Y's thigh and breast without consent.

28. That day, the assistant principal allegedly followed up with one of the staff members regarding what Y had told them back in November.

29. The next day, December 15, 2022, the principal allegedly met with the teacher of Y's class in which the incident occurred to discuss what happened.

30. Also on December 15, 2022, the principal met with X and Y to discuss the incident. During that meeting, Y alleged that Z had grabbed her

thigh and breast. Whitnall began working on a separation agreement that day to address the situation.

31. Later, on December 15, 2022, the principal met with Whitnall's School Resource Officer, a police officer, regarding the incident. The principal shared how Y had reported the inappropriate touching. He also shared how Y's teacher had spoken with him about the incident around the time it occurred, but that he did not recall the teacher telling him anything about inappropriate touching.

32. After the police officer's interviews of Y and Z described above, the police officer also considered written statements from the two staff with whom Y initially spoke and from Y's teacher. One of the staff member's statements asserted that Y had told her that Z had dropped a pencil and brushed her chest when picking it up and described this as an accident. The staff member also asserted that Y said she would be comfortable telling Z to stop bothering her in the future and that she did not need help to do so.

33. On December 19, 2022, the school issued a separation order for Y and Z. It adjusted the students' school schedules to aid in their physical separation.

34. On January 6, 2023, Whitnall's school resource officer reviewed video footage regarding alleged bullying of Y after her incident with Z but could not substantiate Y's allegations.

35. After the officer's investigation of the incident, she concluded that there was not enough credible evidence to refer the incident for charges. The separation order, however, remained in place.

36. X later told Whitnall staff that Y had told her about Z's alleged violations of the separation order. School employees allegedly investigated these violations and found no intentional violations of the order.

### **VICTIM RIGHTS AT ISSUE**

37. X's complaint raises two potential victim rights violation: first, the right under Wis. Const. art. I, § 9m(2)(f) to "reasonable protection from the accused throughout the criminal and juvenile justice process"; and second, the right under Wis. Const. art. I, § 9m(2)(c) to "timely disposition of the case, free from unreasonable delay," *see also* Wis. Stat. § 950.04(1v)(k).

### **CONCLUSIONS OF LAW**

38. The Board finds that Y was a crime victim because she alleged that Z touched her breast without her consent, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. § 948.02(2).

39. The Board finds that Whitnall is a public school district (i.e. a "public agency") subject to the Board's authority. *See* Wis. Stat. § 950.09(2)(a).

40. The Board finds that none of the allegations in the complaint occurred more than three years before the complaint was filed. *See* Wis. Admin. Code CVRB § 1.04(5).

41. The Board finds that X's complaint implicates the rights to reasonable protection from the accused and to timely disposition of the case, without unreasonable delay. *See* Wis. Const. art. I, §§ 9m(2)(c), (2)(f); Wis. Stat. § 950.04(1v)(k).

42. The Board concludes that Respondent violated these two rights.  
*Reasonable protection from the accused.*

43. Several key facts are undisputed that lead to the Board's conclusion that Whitnall violated Y's right to reasonable protection from the accused:

- An incident occurred between Y and Z sometime in the first half of November 2022 that may or may not have involved Z inappropriately touching Y.
- Soon after this incident, Y met with two Whitnall staff members to complain about the incident.
- The two staff members did not report this conversation with Y to any other Whitnall staff or to Y's parents.

- Soon after this incident, Y also told her version of events to the teacher present in the classroom at the time of the incident, Stuart White.
- Mr. White had a discussion with the Whitnall principal about the incident that same day.

44. Some relevant facts remain disputed. There is a dispute about what exactly Y told the two staff members and whether she clearly conveyed to them an allegation that Z had inappropriately touched her. Similarly, there is a dispute over what exactly Mr. White told the principal about Y's allegations, and whether Mr. White conveyed to the principal an allegation that Z had inappropriately touched Y.

45. But it is not necessary to resolve these factual disputes to conclude that Whitnall violated Y's right to reasonable protection from the accused.

46. Even if Y had only conveyed ambiguous allegations to the two staff members rather than a clear, express allegation of inappropriate touching by Y, those two staff members could have discussed the incident with Whitnall administrators, who in turn could and should have promptly conducted an investigation to learn more about what actually happened between Y and Z.

47. Similarly, even if Mr. White did not clearly convey an allegation of inappropriate touching to the principal, even an ambiguous report should have triggered a more robust response than the inaction that occurred between mid-November 2022 and when Y's mother contacted the school about a month later.

48. Indeed, Whitnall’s own policies indicate that more should have been done, even in response to Y’s ambiguous allegations.<sup>4</sup>

49. Whitnall’s Student Anti-Harassment policy provides that “[t]eachers, administrators, and other school employees who have the knowledge or received notice that a student has *or may have been* the victim of harassment prohibited under this policy shall report the alleged harassment to one (1) of the Compliance Officer(s) and the building principal or Superintendent within two (2) days.” (Whitnall Interrogatory Response at 8 (emphasis added).)

50. There is no evidence that the Whitnall staff members to whom Y spoke after the November 2022 incident followed this policy and reported the alleged harassment to Whitnall’s compliance officers or the principal.

51. If that policy had been followed, it would have required the Compliance Officer to “contact the Complainant and begin either an informal or formal process (depending on the request of the Complainant or the nature of the alleged harassment).” (Whitnall Interrogatory Response at 8–9.) In other words, following Whitnall’s policy would have triggered an investigation in

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<sup>4</sup> To be clear, CVRB’s finding of a victim’s rights violation does not depend on Whitnall’s policies. Rather, the policies provide additional reason to conclude that Whitnall had the duty and ability to do more to protect Y’s constitutional right to reasonable protection from the accused.

November 2022 rather roughly than a month later, only after Y's mother contacted the school.

52. Moreover, Whitnall policy provides that “[u]pon receiving a complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further harassment or retaliation including but not limited to a change of class schedule for the Complainant or the Respondent, or possibly a change of school for either or both of the parties.” (Whitnall Interrogatory Response at 10.)

53. This provision indicates that if Whitnall policy had been followed, a separation agreement may have been put in place between Y and Z a month earlier than it was.

54. Whitnall's inaction in November 2022 is further revealed by the steps that it took roughly a month later, after Y's mother contacted the school regarding Y's allegations. In response to that contact, Whitnall promptly investigated Y's allegations, involved the police, and put a separation agreement in place between Y and Z. This is what should have happened immediately after Y relayed her allegations—even if ambiguous—to three separate Whitnall staff a month earlier.

55. By failing in November 2022 to promptly begin an investigation into the allegations and consider putting a separation agreement in place while

that investigation continued, Whitnall violated Y's right to reasonable protection from the accused.

*Timely disposition of the case.*

56. For largely the same reasons, Whitnall's non-response to Y's allegations in November 2022 establish a violation of Y's right to a timely disposition of her case, free from unreasonable delay.

57. To be sure, once Y's mother contacted the school, the investigation into Y's allegations was prompt and timely.

58. But that investigation should have begun roughly a month earlier, when Y first relayed allegations—ambiguous or not—to Whitnall staff.

59. Indeed, Whitnall's harassment policy provides that "[a]ll investigations shall be commenced as soon as practicable upon receipt of a complaint and concluded as expeditiously as feasible, in consideration of the circumstances, while taking measures to complete a thorough investigation." (Whitnall Interrogatory Response at 10.)

60. This again indicates that Whitnall could and should have begun an investigation sooner to more promptly resolve the veracity of Y's allegations.

*No sanction will be issued.*

61. Despite these two rights violations, the Board concludes that a sanction is not warranted here, for several reasons.

62. First, Whitnall appears to have adequate policies in place that require investigation and reporting of alleged incidents like these. It appears that those policies were not followed in this case—which contributed to the rights violations that occurred—but there is no indication of a systematic policy failure at Whitnall. At worst, additional training on Whitnall’s existing policies would be warranted.

63. Second, the police investigation determined that there was not enough credible evidence to refer the incident for charges.

64. Third, the Whitnall staff to whom Y spoke may have had legitimate reasons to question the veracity of Y’s allegations given their past experiences with her. Nevertheless, Whitnall’s investigation and reporting policies are presumably in place to ensure that all allegations are given serious consideration, even where the alleged victim might be perceived by certain staff as lacking credibility.

## ORDER

Based on the foregoing, it is hereby ORDERED:

65. That the complainant has shown by clear and convincing evidence that the respondent violated her rights as a crime victim.

66. That no sanction for these violations will be ordered.

67. That this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board.

68. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. See Wis. Admin. Code CVRB § 1.10.

69. That a copy of this final decision shall be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the “Service List” below.

Dated this 20th day of February, 2025.



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Chairperson Jen Dunn  
Crime Victims Rights Board