



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
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August 9, 2016

X
Superintendent
Broward County School District
600 SE Third Ave.
Fort Lauderdale, Florida 33301

Re: OCR Complaint #04-14-1738

Dear Superintendent X:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its complaint resolution process of the above-referenced complaint that was filed with our office on September 3, 2014, against the Broward County School District (District), alleging discrimination on the basis of sex. Specifically, the Complainant alleged that the District (including Franklin Academy, a charter school within the District serving students from Kindergarten through eighth grade) offers single-sex classes in a manner that violates Title IX of the Education Amendments of 1972 (Title IX). The District has voluntarily entered into a resolution agreement (Agreement) that resolves the complaint allegations.

OCR investigated this complaint pursuant to Title IX, as amended, 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any educational program or activity receiving federal financial assistance from the Department. Because the District receives federal financial assistance from the Department, it is subject to Title IX.

During its investigation, OCR reviewed and analyzed documents submitted by the District in response to OCR's data requests. Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this complaint and entered into an Agreement that commits the District to discontinue its use of single-sex classes across the District and on all of Franklin Academy's campuses beginning with the 2016-2017 school year and for the following three school years. This letter summarizes the applicable legal standards, the information gathered during OCR's investigation, and the provisions of the Agreement.

Summary of Complainant's Allegations

The Complainant alleged that the District, including Franklin Academy, instituted single-sex programs at its schools based on the discredited notion that boys and girls learn and develop so differently that they should be separated and taught differently and employed teaching methods, environments, and curricula that differed drastically for boys and girls. The Complaint further alleged that the District: (1) classified students by sex without adequate justification; (2) used teaching methods that promote overly broad stereotypes based on gender; (3) failed to ensure voluntary participation of students; (4) failed to provide a substantially equal coeducational alternative; and (5) failed to properly evaluate the single-sex programs.

Legal Standards

The Title IX implementing regulations at 34 C.F.R. § 106.34(a) and (b) provide as follows:

- (a) Except as provided for in this section or otherwise in this part, a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.
 - (1) Contact sports in physical education classes. This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.
 - (2) Ability grouping in physical education classes. This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.
 - (3) Human sexuality classes. Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.
 - (4) Choruses. Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.
- (b) *Classes and extracurricular activities--(1) General standard.* Subject to the requirements in this paragraph, a recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities if--
 - (i) Each single-sex class or extracurricular activity is based on the recipient's important objective—
 - (A) To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or

- (B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;
- (ii) The recipient implements its important objective in an evenhanded manner; (iii) Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and
- (iv) The recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.
- (2) *Single-sex class or extracurricular activity for the excluded sex.* A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (b)(1)(ii) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.
- (3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.
- (4) *Periodic evaluations.* (i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.
- (ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

Summary of Investigation

During the 2013-2014 and 2014-2015 school years, the two most recent complete school years under investigation in this complaint, the District offered single-sex classes at the following three elementary schools and two high schools: Charles Drew Elementary School, Dillard Elementary School, Pompano Beach Elementary School, Boyd H. Anderson High School, and Nova High School. Beginning with the 2014-2015 school year, McNicol Middle Magnet and STEM School, a science and pre-engineering magnet school, also offered single-sex classes. The District continued to offer single-sex classes during the 2015-2016 school year. In addition, Franklin Academy offered single-sex classes at its Pembroke Pines and Cooper City campuses during the 2013-2014, 2014-2015, and 2015-2016 school years and at its newly established Sunrise campus during the 2015-2016 school year.

1. The District's Justifications for Offering Single-Sex Classes

The Title IX implementing regulation at 34 C.F.R. § 106.34(b)(1)(i) requires each recipient, prior to offering a single-sex class, to establish a specific justification for the proposed single-sex class that demonstrates the recipient's important objective for offering the single-sex class. This important objective may be: (a) to improve its students' educational achievement through its overall established policies to provide diverse educational opportunities (the diversity objective), or (b) to meet the particular, identified educational needs of its students (the needs objective). The recipient must also demonstrate that the single-sex nature of the class is "substantially related" to achieving this important objective.

The information obtained from the District and Franklin Academy prior to the resolution of this complaint provided some general justifications but did not state justifications for each individual single-sex class offered nor sufficient information to demonstrate that the single-sex nature of each class is substantially related to achieving the District's or Franklin Academy's important objective.

The District's and Franklin Academy's initial submissions to OCR on February 3 and 4, 2015, did not provide a justification for each individual single-sex class offered at their schools and campuses. The District submitted "Program Hypotheses" for Charles Drew Elementary School, Dillard Elementary School, Boyd Anderson High School, and Nova High School, which provided a general statement for offering a single-sex program at each school as a whole during the 2013-2014 and 2014-2015 school years, without disaggregation by class or evidence of a substantial relationship between the single-sex nature of the classes and the achievement of their important objectives. While Franklin Academy provided general explanations for the offering of single-sex classes, it did not provide justification for each individual single-sex class.

In its supplemental data submission to OCR on October 15, 2015, the District presented further justifications for each single-sex class offered at each of its schools during the 2013-2014 and 2014-2015 school years. Included in this supplemental submission were justifications for the single-sex classes at Pompano Beach Elementary School and McNicol Middle Magnet and STEM School. However, the information provided, such as statistical evidence of areas of student deficiency, was not disaggregated by sex and/or grade.

On November 2, 2015, Franklin Academy provided additional information to OCR regarding the single-sex classes offered on its campuses. Franklin Academy advised OCR that the justification for offering single-sex classes was to afford a diverse educational opportunity not otherwise available to public school students in the District. Franklin Academy explained that it utilizes a hybrid educational model, in which the core curriculum is taught in a single-sex setting and the enrichment program is taught in a coeducational setting, to accomplish this important objective. However, Franklin Academy did not present any justifications for each individual single-sex class offered.

2. Evenhanded Offerings

The Title IX implementing regulation at 34 C.F.R. § 106.34(b)(1)(ii) requires each recipient to conduct its single-sex classes in an evenhanded manner. The recipient, in implementing its important objective, must provide equal educational opportunities to students regardless of their sex, with the result that both sexes receive substantially equal classes.

If the recipient asserts the diversity objective and has identified single-sex classes for which it can demonstrate a substantial relationship to its important objective, it must still ensure that the choice of diverse educational opportunities, including single-sex or coeducational classes, is offered evenhandedly to male and female students. To do this, it must conduct a thorough and impartial assessment of what single-sex classes to offer to each sex and then offer those classes evenhandedly to its students.

If the recipient asserts the needs objective, it must first conduct an assessment to identify the educational needs of its students and then determine how to meet those needs on an evenhanded basis. If a recipient has evidence demonstrating that a single-sex class in a particular subject would meet the particular, identified educational needs of students of both sexes and that the single-sex nature of the classes is substantially related to meeting the needs for both sexes, then if the recipient offers a single-sex class in that subject, it must do so for both sexes. On the other hand, if the evidence shows that the single-sex class in that subject would meet the particular, identified needs of only one sex or that the single-sex nature of the class would be substantially related to meeting the needs of only one sex, a recipient may not offer the single-sex class to students of the other sex. That recipient would instead have to determine, based on its assessment of the educational needs of both sexes, whether a single-sex class in another subject should be offered to the excluded sex, in order to meet the evenhandedness requirement.

At the time of the District's request to resolve this complaint, neither the District nor Franklin Academy had provided OCR with the necessary information to make a determination regarding the evenhandedness of the District's or Franklin Academy's single-sex offerings. In instances where the District or Franklin Academy asserted the diversity objective, additional evidence was needed for OCR to reach a determination as to the schools' assessments of what single-sex classes to offer to each sex. With respect to single-sex classes for which the District asserted the educational needs objective, OCR needed to obtain additional evidence concerning the assessments conducted by the District for the purpose of identifying the educational needs of its students and determining how to meet those needs on an evenhanded basis.

3. Voluntariness

The Title IX implementing regulation at 34 C.F.R. § 106.34(b)(1)(iii) requires that student enrollment in each single-sex class be completely voluntary. The affirmative consent of the designated decision-maker, whether the parent or the student, must be received before assigning a student to a single-sex class. Regardless of whether the decision-making authority rests with the student or the parent, the decision-maker must affirmatively opt into a single-sex class; the student may not simply be assigned to a single-sex class by the school and then be permitted to

opt out. If no affirmative consent is received, the student must be enrolled in a coeducational class.

Because an uninformed decision may, in many circumstances, not be completely voluntary, OCR recommends that a recipient provide pre-enrollment information about each single-sex class to students and parents in sufficient time and in a manner that is accessible to those with disabilities and with limited English proficiency so that the decision-maker can make an informed choice. This pre-enrollment information should explain that the decision-maker has the option of choosing between the coeducational and single-sex class, describe the similarities and differences between the coeducational and single-sex classes, and provide a summary of the recipient's justification for offering the single-sex option. In providing this pre-enrollment information, a recipient must ensure that the information is conveyed in a manner that does not pressure parents to enroll students in a single-sex class.

The District produced some parental communications regarding its single-sex classes, including permission slips for individual students' participation in single-sex classes. The available information showed that, during the 2013-2014 school year, not all student enrollment in the District's single-sex classes was completely voluntary. For example, the District's 2013-2014 evaluation of its single-sex classes revealed complaints from parents and students regarding the enrollment of students in single-sex classes without their knowledge or consent and pressure from teachers and guidance counselors to enroll in single-sex classes. In addition, teachers expressed concerns to the evaluators that low-achieving students and those with behavioral problems had been steered into single-sex classes.

Further, during the 2013-2014 school year, Nova High School did not issue parental notification letters/consent forms to the parents of students enrolled in single-sex classes until after the school year had begun. At Charles Drew Elementary School, Dillard Elementary School, and Boyd Anderson High School, a number of parents did not sign the required consent forms until after the school year had begun.

Likewise, information for the following 2014-2015 school year raised similar concerns regarding the voluntariness of student enrollment in the District's single-sex program. Dillard Elementary School, Boyd Anderson High School, and Charles Drew Elementary School did not issue their parental notification letters/consent forms until after the school year had begun. At Nova High School and McNicol Middle Magnet and STEM School, OCR's review found that many parents did not sign the required consent forms until after their students' enrollment in the single-sex classes.

Franklin Academy advised OCR that, as a public charter school, it is a school of choice and parents voluntarily elect to send their children to Franklin Academy rather than to the District-assigned school. Franklin Academy also informed OCR that it requested that each parent sign an affirmative consent for his or her child's enrollment in each single-sex class and received a 100% return rate. Franklin Academy also submitted a sample affirmative consent form for 2015-2016, which states, in relevant part, that it applies retroactively to any prior academic year in which the child was enrolled at Franklin Academy. Because an affirmative consent to enroll a student in a

single-sex class cannot be applied retroactively under Title IX, OCR determined that Franklin Academy's affirmative consent form did not comply with the requirements of Title IX.

Accordingly, OCR found that the District did not comply with Title IX's requirement that student enrollment in single-sex classes be voluntary. The District has addressed this by entering into the Agreement, pursuant to which the District will utilize a coeducational model for all classes beginning with the 2016-2017 school year and continuing through the 2019-2020 school year.

4. Substantially Equal Coeducational Options

The Title IX implementing regulation at 34 C.F.R. § 106.34(b)(1)(iv) requires, for each single-sex class offered, the recipient to offer to all other students, including students of the excluded sex, a substantially equal coeducational class in the same subject. At least one substantially equal coeducational section must be offered in each subject for which there is a single-sex class, and more than one section may be needed because every student who requests a coeducational option must be enrolled in one.

OCR considers all relevant factors, both individually and in the aggregate, in determining whether a coeducational class is substantially equal to a single-sex class. These factors include, but are not limited to: (1) the admissions criteria and policies; (2) the educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology; (3) the qualifications of faculty and staff; (4) geographic accessibility; (5) the quality, accessibility, and availability of facilities and resources provided to the class; and (6) intangible features, such as the reputation of faculty.

The evidence gathered prior to the resolution of this complaint shows that the District offered coeducational classes for almost all of the District's single-sex classes; however, OCR had not completed its assessment of whether the available coeducational classes were substantially equal to the single-sex classes. Although the District submitted some information regarding the educational benefits offered by each class and teacher qualifications, additional information was required regarding the following factors in order for OCR to assess the substantial equality of the classes: (1) the admissions criteria and policies of each class; (2) clarification regarding the educational benefits provided by each class; (3) clarification regarding the qualifications of faculty and staff teaching each class; (4) the quality, accessibility, and availability of facilities and resources provided to each class; and (5) intangible features, such as the reputation of faculty.

Franklin Academy confirmed to OCR that it did not offer coeducational class options for any of its single-sex core subjects of English/Language Arts, Math, Science, and Social Studies.

5. Periodic Evaluations

The Title IX implementing regulation at 34 C.F.R. § 106.34(b)(4) requires a recipient to conduct periodic evaluations to ensure that its single-sex classes are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes are substantially related to the achievement of the important objective for the classes.

The recipient must evaluate each of its single-sex classes, and the original justification behind each single-sex class, at least every two years. The periodic evaluations should also confirm that substantially equal single-sex classes are offered, if necessary to comply with the evenhandedness requirement, and that a substantially equal coeducational alternative to each single-sex class is available. The periodic evaluations must assess evidence and data related to the recipient's single-sex classes, rather than rely on the comparator school or research evidence used at the justification stage.

In determining whether a periodic evaluation demonstrates that a single-sex class is still substantially related to the recipient's important objective, OCR will consider all relevant sources of evidence, including, but not limited to: students' grades; students' scores on standardized state-wide or district-wide exams; discipline rates; attendance data; enrollment data; and educators' observations and evaluations of the effectiveness of each class. Because the biennial evaluations must show that the single-sex nature of the class results in achievement of, or progress toward, the recipient's important objective, the students in the single-sex class should be compared to those in the substantially equal coeducational class.

The District's 2013-2014 evaluation of its single-sex program encouraged the use of traditional gender-based classroom methods and strategies without an assessment of whether they are based on sex stereotypes or overly broad generalizations about either sex. In addition, no evidence was presented to directly support the increased effectiveness of the proposed methods and strategies for one sex over the other or when used in a single-sex setting.

In assessing whether the District's single-sex classes were still substantially related to the District's important objectives, the 2013-2014 evaluation noted that, among the reasons for continuing to offer single-sex classes in the future was "a lack of reasons not to continue." While the evaluation considered students' grades, scores on standardized state-wide exams, discipline rates, attendance data, enrollment data, and educators' observations and evaluations of the effectiveness of each class in assessing whether the single-sex classes were still substantially related to the District's important objectives, the assessment was limited to the annual progress of only single-sex students, without a comparison to the progress of coeducational students.

In its initial submission to OCR, Franklin Academy produced an undated narrative of teacher observations and anecdotes of single-sex classes in grades Kindergarten through eight and submitted 2013-2014 student achievement test results for its Pembroke Pines campus.

In its supplemental submission to OCR, Franklin Academy stated that its Pembroke Pines campus opened during the 2011-2012 school year, the Cooper City campus opened during the

2013-2014 school year, and the Sunrise campus opened during the 2015-2016 school year. Franklin Academy stated that it conducts a comprehensive evaluation of its single-sex programs at the end of each school year, which included the following factors: (1) an evaluation of its instructional personnel; and (2) an evaluation of student achievement data, behavior referrals, parent survey results, and administrator observations for each course offered. Attached to Franklin Academy's supplemental submission was a sample narrative highlighting some of the gender-specific methods and strategies used in teaching its single-sex classes during the 2015-2016 school year, as well as 2015 student achievement test results for its Pembroke Pines campus.

OCR determined that an evaluation of Franklin Academy's single-sex classes at the Sunrise campus, which opened for school year 2015-2016, was not yet due during OCR's investigation of this complaint. However, biennial evaluations satisfying the requirements of Title IX were required of the single-sex classes at the Pembroke Pines campus, which opened for school year 2011-2012, and the Cooper City campus, which opened for school year 2013-2014. At the time of the District's agreement to voluntarily resolve this complaint, Franklin Academy had not provided to OCR evaluations of its Pembroke Pines campus and Cooper City campus.

D. Conclusion

Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved prior to the conclusion of the investigation if the recipient expresses an interest in resolving the issues. In this case, the District expressed an interest in voluntarily resolving this complaint and entered into the Agreement, which provides that beginning with the 2016-2017 school year, and for the next three school years (2017-2018, 2018-2019, and 2019-2020), all schools operated by the District and all campuses of Franklin Academy will utilize a coeducational instruction model for all classes (except those in which the separation of students on the basis of sex is permitted pursuant to 34 C.F.R.

§ 106.34(a). The Agreement also provides that the District will certify in writing that it has notified all parents at the relevant schools that single-sex classes have been discontinued. On June 23, 2016, the District fulfilled this obligation.

OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct onsite visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues raised. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal

statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly-authorized OCR official and made available to the public.

Intimidation of or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces or because one has made a complaint or participated in any manner in an investigation in connection with a complaint. If this happens, the individual may file a complaint alleging such treatment. The complainant may also file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally-identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR appreciates the District's cooperation during the investigation of this complaint. If you have any questions regarding this letter, please contact Vahn Wagner, Senior Attorney, at (404) 974-9392 or Virgil Hollis, Compliance Team Leader, at (404) 974-9366.

Sincerely,

Melanie Velez
Regional Director

Enclosure (Signed Resolution Agreement)

cc: X, Director, Innovative Programs Design/Support (w/ encl.)
X, Director, Equal Educational Opportunities/ADA Compliance (w/ encl.)