December 6, 2019

Dr. Joanne Roberts  
By email: jroberts@sau88.net  

Re: Complaint No. 01-19-1306  
SAU #88 – Lebanon School District

Dear Superintendent Roberts:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Lebanon School District (District). The Complainant alleged that the District discriminated against XXX XXXX (Student) on the basis of sex. Specifically, the complaint alleged that the Student was treated differently than XXXXXXXXXXX when XXX was not allowed to play for the XXXXXXXXXXXXXXX team in the pre-season XXXXXXXXXXX XX XXXXXX XX, XXXX. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance from the Department. Because the District receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following legal issue for investigation:

Whether the District treated the Student differently on the basis of sex when it denied XX the opportunity to play for the XXXXXXXXXXXXXXX team in the pre-season XXXXXXXXXXX XX XXXXXX XX, XXXX, in violation of 34 C.F.R. Section 106.31(a).

Summary of Preliminary Investigation

The Complainant alleged that the District denied the Student the opportunity to compete in a XXXXXXXX team XXXXXXXXXXX XX XXXXXX XX, XXXX, based on XXXX sex rather than XXXX skill level. That is, the Complainant alleged that the District limited or denied the Student playing time based on XXXX sex, using a XXXXXXXXXXX XX injury as a pretext for unlawful discrimination. The District asserted that the Student’s playing time was based on XXXX skill level.
The Student is currently in XXXX at the District’s High School. In XXXX, the Student joined the XXXXXXXXXX team (XXXXXXX team), but sustained XXXX injuries that sidelined XXXX for the entirety of that season. The Student rehabilitated XXXX injury and actively participated on the XXXXXXXXXX team in XXXX (2018-2019 season).

The Student spent the summer before XXXX practicing and training to advance from the XXXXXXXXXX to XXXXXXXXXX team. District coaching staff observed XXXX practicing with other XXXXXXXXXX players in the week preceding the team’s first scrimmage on XXXXX XX, XXXX. Although the District acknowledged that the Student made significant improvements in XXXX skill level, the coaching staff did not believe that XXXX had improved sufficiently to play with the XXXXXXXXXX team yet. The District asserted that therefore, the coaches did not consider it appropriate – or safe – for the Student to play against XXXXXXXXXX competition at the XXXXX XX scrimmage. The District told OCR that this decision was specific to that scrimmage and was not necessarily intended to last the entire season.

On XXXXX XX, XXXX, both the XXXXXXXXXX and XXXXXXXXXX teams competed in a round robin, multi-team competition, with each “game” lasting twenty minutes. The XXXXXXXXXX teams competed first, followed by the XXXXXXXXXX teams. OCR determined that only seven of the twenty-four (24) players on the District’s XXXXXXXXXX roster were allowed to participate in the XXXXXXXXXX XXXXXXXXXX. Although the parties differ as to how much the Student played in the XXXXXXXXXX XXXXXXXXXX, it is undisputed that the XXXX was not allowed to play in the XXXXXXXXXX Scrimmage. According to the Complainant, the Student left the XXXXXXXXXX program because XXX was not allowed to compete in the XXXXXXXXXX team XXXXXXXXXX.

The District explicitly states that “Injury was not a factor in the [Coach’s] decision not to play the Student in the XXXXXXXXXX Scrimmage.” The Complainant disputed this assertion, stating that the XXXXXXXXXX (Coach) told the Student that he was not “going to be negligent” by putting XXXX in the XXXXXXXXXX scrimmage, because of XXXX XXXXX. The Complainant told OCR that the coaches also told the Student that XXXX was not “needed.”

Thereafter, the Complainant asked to meet with District personnel to discuss the Student’s exclusion from the XXXXXXXXXX XXXXXXXXXX. In her email requesting the meeting, the Complainant alleged to the high school principal and athletic director that the Student was treated differently on the basis of sex. The athletic director responded via email: (1) inviting the Student to meet with him to express XXXX concerns and self-advocate; (2) stating that although the District intended the Student to remain a part of the XXXXXXXXXX program, XXXX “needs to hear from XXXX coaches what they anticipate XXXX role being this year and what XXXX can expect with regard to playing time … XXXX needs to be prepared to hear that based on XXXX skill level, talent and physical ability … XXXX will be a XXXXXXXXXX player this year;” and, 3) confirmed that the coaches would decide who plays at the XXXXXXXXXX.
During the investigation, OCR reviewed documents provided by the District and interviewed the Complainant. As a result of its investigation to date, OCR has a preliminary concern that the Student’s sex may have impermissibly affected decisions about XXXX playing time. To complete its investigation, OCR would need to gather additional data and interview District staff to determine whether the coaches’ decisions affecting the Student’s playing time were based on XXXX sex or whether there was a legitimate, nondiscriminatory reason for the decisions. Furthermore, additional information is needed to determine whether the reason given by the District is a pretext, or excuse, for unlawful discrimination. OCR has not yet conducted interviews with District staff necessary to make these determinations.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s Case Processing Manual, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the District’s implementation of the Agreement.

This concludes OCR’s investigation of the complaint. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

Sincerely,

/s/
Meighan A.F. McCrea
Compliance Team Leader

Enclosure

cc: Allen L. Kropp, AKropp@dwmlaw.com
    Kathleen E. Landis, KLandis@dwmlaw.com