



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

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 XXXXX XXXXXX when XXXX was not allowed to play for the XXXXXXXXXXXXXXXX team in the pre-season XXXXXXXXXXXX XX XXXXXXX 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 XXXXXXXXXXXXXXXX team in the pre-season XXXXXXXXXXXX XX XXXXXXX 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 XXXXXXXXXXXX XX XXXXXXX 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 XXXX 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 XXXXXXXXXXXXXXXX team (XXXXXXXXXXXXXXXXXXXX team), but sustained XXXX injuries that sidelined XXXX for the entirety of that season. The Student rehabilitated XXXX injury and actively participated on the XXXXXXXXXXXXXXXX team in XXXX (2018-2019 season).

The Student spent the summer before XXXX practicing and training to advance from the XXXXXXXXXXXXXXXX to XXXXXXXXXXXXXXXX team. District coaching staff observed XXXX practicing with other XXXXXXXXXXXXXXXX players in the week preceding the team’s first scrimmage on XXXXXX 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 XXXXXXXXXXXXXXXX team yet. The District asserted that therefore, the coaches did not consider it appropriate – or safe – for the Student to play against XXXXXXXXXXXXXXXX competition at the XXXXXX 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 XXXXXX XX, XXXX, both the XXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXX teams competed in a round robin, multi-team competition, with each “game” lasting twenty minutes. The XXXXXXXXXXXXXXXX teams competed first, followed by the XXXXXXXXXXXXXXXX teams. OCR determined that only seven of the twenty-four (24) players on the District’s XXXXXXXXXXXXXXXX roster were allowed to participate in the XXXXXXXXXXXXXXXX XXXXXXXXXXXX. Although the parties differ as to how much the Student played in the XXXXXXXXXXXXXXXX XXXXXXXXXXXX, it is undisputed that the XXXX was not allowed to play in the XXXXXXXXXXXXXXXX Scrimmage. According to the Complainant, the Student left the XXXXXXXXXXXX program because XXXX was not allowed to compete in the XXXXXXXXXXXXXXXX team XXXXXXXXXXXX.

The District explicitly states that “Injury was not a factor in the [Coach’s] decision not to play the Student in the XXXXXXXXXXXXXXXX” scrimmage.” The Complainant disputed this assertion, stating that the XXXXXXXXXXXXXXXX (Coach) told the Student that he was not “going to be negligent” by putting XXXX in the XXXXXXXXXXXXXXXX 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 XXXXXXXXXXXXXXXX XXXXXXXXXXXX. 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 XXXXXXXX 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 XXXXXXXXXXXXXXXX player this year;” and, 3) confirmed that the coaches would decide who plays at the XXXXXXXXXXXXXXXX.

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