

October 5, 2018

Mark J. Silverstein
Superintendent
Glassboro School District
560 Joseph Bowe Boulevard
Glassboro, New Jersey 08028

Re: Case Number 02-18-1258
Glassboro School District

Dear Superintendent Silverstein:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Glassboro School District (the District). The complainant alleged that the District discriminated against her son (the Student), on the basis of his sex, by not permitting the Student to ride his regularly assigned school bus (a) on two occasions in or around January 2018, and (b) on March 6, 2018, as an additional sanction in response to an alleged incident of sexual harassment that occurred in 2011.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. The regulation, at 34 C.F.R. § 106.31(b)(4), specifically prohibits a recipient, on the basis of sex, from subjecting any person to separate or different rules of behavior, sanctions or other treatment.

In its investigation, OCR reviewed documents and information that the complainant and the District submitted to OCR. OCR also interviewed the complainant and her husband.

During school year 2010-2011, while the Student was enrolled in a XXXXXXXXXXXXXXXXXXXX program in the District, District staff investigated an incident that occurred on or about XXXXX X, 2011 (the 2011 incident), in which the Student and XXX other students (Students A and B) XXXXXX XXXXX XXXXX XXXX while riding a District school bus.¹ Seven years later, during school year 2017-2018, the Student was enrolled in the District as a XXXXX grade student, and he attended the XXXXXXXXXXXX School (the School).

The complainant alleged that the District discriminated against the Student, on the basis of his sex, by not permitting the Student to ride his regularly assigned school bus (a) on two occasions in or around January 2018, and (b) on March 6, 2018, as an additional sanction in response to the 2011 incident. The complainant stated that during school year 2017-2018, bus XX picked up the Student at home each morning; and, each afternoon the District transported the Student, along with other students attending a District afterschool program, by bus, to the XXXXXXXX X. XXXXXXXX School (the afterschool program). The complainant further stated that by not permitting the Student to ride bus XX as an additional sanction in response to the 2011 incident, the District breached an agreement entered into on April 26, 2017, during OCR's mediation process, in order to resolve another complaint the complainant had filed with OCR; Case No. 02-17-1112.²

OCR determined that the District provides bus transportation to all students enrolled in the District; and, the District permits students to request to be transported to and/or from school to one other location, upon request.³ During school year 2017-2018, the Student was transported to school via bus XX; and, each afternoon the District transported the Student to the afterschool program via another bus.

¹ As a result of this incident, on XXXXX XX, 2011, the District reported suspected XXXXXXXX XXXXX involving the Student to the Division of Child Protection and Permanency (CP&P); and, on April 4, 2011, the District suspended the Student from the bus until he underwent either a XXXXXXXXXXXXXXXX XXXXXXXXXXXX or received XXXXXXXXXXXX. The complainant subsequently filed a complaint with OCR regarding the 2011 incident, Case No. 02-12-1086, alleging discrimination on the basis of the Student's disability. On October 6, 2015, OCR issued its determination letter, finding insufficient evidence to substantiate that the District had discriminated against the Student, on the basis of his disability, with respect to its handling of the 2011 incident.

² In OCR Case No. 02-17-1112, the complainant asserted that the District did not inform her that it was investigating the 2011 incident as potential sexual harassment at the time of the investigation; and, she did not learn that the District had investigated the incident as such until approximately September 2016, when the School principal informed the complainant that he was XXXXXXXXXXXX the Student to a different XXXXXXXXXXXX because the Student was not permitted to be in the same XXXXXXXXXXXX as another student involved in the incident due to the 2011 incident. Upon learning that the District had reassigned the Student to a new XXXXXXXXXXXX in September 2016, based on the 2011 incident, the complainant filed OCR Case No. 02-17-1112, in which she alleged that the District discriminated against the Student, on the basis of his sex, by reassigning him from his classroom on September 9, 2016, as an additional sanction in response to an incident of alleged sexual harassment that occurred in 2011. This allegation was resolved through OCR's mediation process, Early Complaint Resolution (ECR, now referred to as Facilitated Resolution Between the Parties (FRBP)) on April 26, 2017. Pursuant to the ECR agreement, the District agreed that for as long as the Student was enrolled in the District, it would not deny or limit the Student's participation in any District program or activity, including but not limited to classroom assignments, academics, extracurricular activities, sports, or transportation, because of the 2011 bus incident that occurred when the Student was in XXXXXXXXXXXXXXXXXXXX.

³ See <https://www.gpsd.us/Page/5563> (Site last visited September 24, 2018).

With respect to Allegation 1(a), the complainant asserted that on two occasions in or around January 2018 (incidents 1 and 2), the District dismissed students early from school due to inclement weather and cancelled all scheduled afterschool programs; and, students who were regularly scheduled to attend an afterschool program were sent home on their regularly assigned buses upon dismissal. The complainant's husband asserted that when he received a text message from the District stating that classes had been dismissed early due to inclement weather, he immediately called the School to request that the Student be permitted to ride bus XX home from school because the afterschool program had been cancelled. The complainant's husband asserted that on both occasions, the School secretary told him that the Student would not be permitted to ride bus XX because "it was too late to put him on the bus." As a result, the complainant's husband asserted that he had to leave work to pick up the Student from School.

With respect to Allegation 1(b), the complainant asserted that on March 6, 2018, the bus that regularly transported students to the afterschool program was cancelled; and, in order to accommodate the students attending the afterschool program, all students were reassigned to bus XX, which would drop some students off at home and then drop off the remaining students scheduled to attend the afterschool program. The complainant further asserted that when the Student attempted to board bus XX, the bus driver and a teacher (teacher A) told the Student that he could not do so "because of what happened" (incident 3). The complainant asserted that the District then arranged for another bus to drop off the Student at the afterschool program and permitted the Student to choose a friend to ride with him on the separate bus.

OCR determined that on March 13, 2018, the complainant contacted the District's Affirmative Action Officer (AAO) by electronic mail message (email) to report incident 3. The complainant stated that the AAO responded by calling her to apologize for incident 3, and assured her that it would not happen again.

The District confirmed that during the afternoon of March 6, 2018, the Student was not permitted to ride bus XX. After receiving the complainant's email sent to the AAO on March 13, 2018, the AAO then forwarded the email to the Transportation Supervisor (supervisor) on March 14, 2018, requesting that the supervisor contact her to discuss the matter. The same day, the supervisor responded to the AAO by email and asserted that due to a shortage of bus drivers, they had to combine some of the students onto bus XX; but there were not enough seats for all students on bus XX. The supervisor further stated in the email to the AAO that because there were not enough seats for all students, the Student was permitted to pick another student to ride with him on a different bus. The District did not provide any information related to incidents 1 and 2.

On October 4, 2018, the District signed the enclosed resolution agreement to resolve the complaint without further investigation, pursuant to section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the Agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation of the complaint. Upon the District's satisfaction of the commitments made under the Agreement, OCR will close the case.

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 a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it 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.

If you have questions regarding OCR's determinations, please contact Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: Susan Hodges, Esq.