



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

March 1, 2016

IN RESPONSE, PLEASE REFER TO: 03141056

Dr. John J. Bell
Superintendent of Schools
Delaware Valley Administrative Office
236 Route 6 & 209
Milford, PA 18337-9454

Dear Dr. Bell:

This is to advise that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Delaware Valley School District (the District). The Complainant, XXXXXX, alleged that the District discriminated against her on the basis of sex. Specifically, the Complainant alleged that, because of her XXXXXX, the District:

1. denied her request to XXXXXX; and
2. prohibited her from XXXXXX.

OCR enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (Title IX), and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. 34 C.F.R. § 106.1. As a recipient of Federal financial assistance from the Department, the District is subject to this law.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

OCR's investigation included a review of information submitted by the Complainant and the District and interviews with the Complainant and District staff. OCR determined, based on the evidence it reviewed, that the District violated Title IX by subjecting the Complainant to different treatment on the basis of sex XXXXXX. To address this violation, the District entered into a Resolution Agreement (Agreement) with OCR. OCR determined that there was insufficient evidence to find a violation of Title IX regarding the District's denial of XXXXXX. OCR's findings and analysis are discussed below.

Legal Standards

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Under Title IX, “[n]o person in the United States 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 receiving Federal financial assistance.” 20 U.S.C. § 1681(a). The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides, in relevant part, 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 academic, extracurricular, or other education program or activity operated by a recipient which receives Federal financial assistance. The regulation implementing Title IX, at 34 C.F.R. § 106.31(b), further provides that a recipient may not, on the basis of sex, deny any person such aid, benefit or services; treat an individual differently from another in determining whether the individual satisfies any requirement or condition for the provision of such aid, benefit, or service; provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; subject any person to separate or different rules of behavior; or otherwise limit any person in the enjoyment of any right, privilege or opportunity. The regulation implementing Title IX, at 34 C.F.R. § 106.33, provides that a recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex. All students, including transgender students, are protected from sex-based discrimination under Title IX.

In determining whether a recipient has subjected an individual to discrimination, OCR examines whether there were any apparent differences in the treatment of similarly situated individuals. If different treatment is established, OCR then considers whether the recipient had a legitimate, non-discriminatory reason for the apparent difference in treatment, and whether the reason provided by the recipient was a pretext for discrimination. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures, and whether there is any other evidence of discrimination based on sex and gender identity.

Factual Background

xx – paragraphs redacted – xx

Legal Analysis and Conclusions

xx – paragraphs redacted – xx

District Policies and Procedures

The District’s Nondiscrimination Practices and Harassment Policy does not include the required statement that its policies are applicable to discrimination or sexual, including gender-based, harassment carried out by employees, other students, and third parties. As a part of its Agreement with OCR, the District will revise all of its policies, procedures, regulations, documents related discrimination (including harassment) to specifically include gender-based discrimination as a form of discrimination based on sex. The District will submit its revised materials to OCR for its approval.

This concludes OCR’s investigation of the complaint and 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. As is our standard practice, OCR will monitor the implementation of the Agreement until the District is in compliance with the regulation implementing Title IX, at

34 C.F.R. §106.31, which was at issue in this case. When fully implemented, the Agreement will address the compliance violations identified in OCR's investigation.

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 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 Complainant may file another 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have questions about OCR's determination in this complaint, please contact Ms. Marcia Jones at (215) 656-8555 or marcia.jones@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader
Philadelphia Office

cc: Anthony Sanchez, Esquire

Enclosure