



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

July 5, 2022

IN RESPONSE, PLEASE REFER TO: 03201279

Mr. Gregory Frigoletto
Superintendent
Wayne Highlands School District
474 Grove Street
Honesdale, PA 18431
Sent by email only: gfrigoletto@whsdk12.com

Dear Mr. Frigoletto:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint against the Wayne Highlands School District, which we will refer to as the District. The Complainant, XXXXXXXXXXXXX, alleged that the District discriminated against her son, XXXX, on the basis of sex XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXX. We will refer to the Complainant's son as the Student in this letter.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) 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. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX and its implementing regulation.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District. After carefully considering all evidence obtained during the investigation, OCR found sufficient evidence to support a finding of a Title IX violation. OCR's findings and conclusions are discussed below.

FACTUAL SUMMARY

During the XXXX school year, the Student attended XXXXXXXXXXXXXXXXXXXXXXXX XXXX. The Complainant alleges that, on XXXXXXXXXXXXX, she received a phone call from the Student's teacher notifying her that the Student was in violation of the District's dress code XX XX. The Complainant told OCR that she spoke with the Principal on the same day, who told her that this was a rule in place for decades. XX XX XX XX

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

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XX according to the Complainant, the
School is still enforcing the same dress code policy. XXXXXXXXXXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.¹

The District provided OCR with a copy of its XXXXXXXXXXXXXXXX Student Handbook², which includes the District’s dress code policy. The policy states that earrings worn by boys is an example of unacceptable dress. In response to this OCR complaint, the District acknowledged a Title IX compliance issue with its dress code policy. It informed OCR that this provision will no longer be enforced. The District stated that the entire policy is currently under review and will likely be revised to eliminate any discriminatory aspects; however, as of XXXX XXX, the same dress code policy is posted to the District’s website in its XXXXXXXXX XXXX Student Handbook.

In response to OCR’s request for data regarding whether any other student(s) were similarly told that they could not wear a particular item of clothing or jewelry to school on the basis of their sex during the 2020-21 and 2021-22 school years, the District responded that there are no records kept regarding this request. The District clarified that there are only 1 or 2 students a year whom are asked to conform with the dress code; however, there is no discipline meted out.

LEGAL STANDARD

Title IX and its implementing regulation, at 34 C.F.R. § 106.31(a)-(b), prohibit a school from excluding, denying benefits to, or otherwise treating any person differently on the basis of sex in its education programs or activities, unless expressly authorized to do so under Title IX. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals of a different sex. If so, OCR then determines whether the District had a legitimate,

¹ The parent of Student 2 never responded to OCR’s multiple attempts to obtain consent, and so there is no remedy for Student 2 in the Resolution Agreement

² https://www.whsdk12.com/application/files/6016/3034/4460/SPC_Student_Handbook_2021-2022.pdf

nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

LEGAL ANALYSIS

There is no dispute that the District currently employs a dress code that prohibits male but not female students from wearing earrings. Thus, through the enforcement of the dress code policy, the District engages in prohibited discrimination by treating male students less favorably than female students with regard to the use of jewelry. The District did not offer a legitimate, nondiscriminatory reason for the different treatment. Instead, the District acknowledges that its dress code policy is discriminatory. The District therefore does not comply with the requirements of Title IX with regard to its dress code policy.

CONCLUSION

On DATE, the District signed a Resolution Agreement with OCR to resolve the concerns identified in our investigation. The Resolution Agreement will require that the District revise its dress code policy to comply with Title IX. The Resolution Agreement also requires that the District issue a memorandum to all staff, students and parents/guardians regarding the revised dress code policy. Last, the Resolution Agreement requires that the District issue a letter of apology to the Complainant and the Student. The Resolution Agreement requires that the letter will also include a copy of the revised dress code policy, and advise the Student that he is permitted to wear an earring to the School.

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, or participates in an OCR proceeding. 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.

If you have any questions, please contact Randle Haley, the OCR attorney assigned to this complaint, at (215) 656-8532 or by email at randle.haley@ed.gov, or Diane Riddick, the OCR investigator assigned to this complaint, at (215) 656-8583 or diane.riddick@ed.gov.

Sincerely,

/s/

Craig D. Ginsburg
Supervisory Attorney
Philadelphia Office
Office for Civil Rights

Enclosure