



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 13, 2023

IN RESPONSE, PLEASE REFER TO: 03231227

Sent via email only: mbarrett@westernwayne.org

Dr. Matthew Barrett

Superintendent, Western Wayne School District

Dear Dr. Barrett:

This is to advise you of the resolution of this complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Western Wayne School District (the District) in Pennsylvania. The Complainant alleges the District discriminated against her on the basis of sex due to perceived pregnancy by excluding her from the Western Wayne [Redacted content] (the School) [Redacted content] team in [Redacted content].

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance. Because the District receives federal financial assistance from the Department, OCR has jurisdiction pursuant to Title VI and its implementing regulations.

Summary of OCR's Investigation

OCR's investigation included a review of texts and emails provided by the Complainant, an interview with the Complainant, a review of emails and policies provided by the District, and interviews with the School Principal, Athletic Director, [Redacted content] Coach (Coach), Guidance Counselor (Counselor), and Nurse. OCR also reviewed the District website.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement pursuant to Section 302 of the CPM because OCR identified a concern regarding the District's response to the incident, a concern regarding the District's policies and procedures addressing pregnancy, and a concern regarding the District's publication of the name and contact information for the Title IX Coordinator and notice of non-discrimination.

Legal Standards

The Title IX regulation at 34 C.F.R. § 106.40(a) prohibits recipients from applying "any rule concerning a student's actual or potential parental, family or marital status which treats students differently on the basis of sex." The regulation also states, in part, that: "[a] recipient shall not discriminate against any student, or exclude any student from its education program or activity,

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including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient." 34 C.F.R. § 106.40(b)(1).

The Title IX regulation instructs recipients to treat pregnancy or childbirth in the same manner and under the same policies as any temporary disability. See 34 C.F.R. § 106.40(b)(4)). Although pregnant students may be required to obtain a physician's certification of fitness to continue in the regular education program or activity, a recipient may do so only if it requires such a certification from all students for other physical or emotional conditions requiring the attention of a physician. (See 34 C.F.R. § 106.40(b)(2)).

Under Title IX, and its implementing regulations at 34 C.F.R. §§ 106.8, 106.30, 106.44, and 106.45, recipients that receive federal financial assistance are responsible for providing students with a non-discriminatory educational environment. A recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator." The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this paragraph.

The regulation implementing Title IX, at 34 C.F.R. § 106.8, requires an institution to take specific steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the education program or activity it operates, and that it is required by Title IX not to discriminate in such a manner. The notice must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. 106.8(b)(2), requires an institution to include the notice of nondiscrimination on its website and in each handbook or catalog that it makes available to the individuals listed above that it is required to notify.

Factual Background

During the first half of the [Redacted content] school year, the Complainant was in the [Redacted content] grade at the School, competed on the School's [Redacted content], and was on the School's [Redacted content] roster for the [Redacted content] season. [Redacted content]

District Policies and Procedures

OCR's investigation included review of the District's policy on pregnant and parenting students. Pursuant to Board Policy 234, Pregnant/Parenting, Married Students, "a student who is eligible to attend district schools and is married and/or pregnant/parenting shall not be denied an educational program solely because of marriage, pregnancy, pregnancy-related disabilities, or

potential or actual parenthood.” Under Policy 234, the “Board reserves the right to require as a prerequisite for attendance in the regular classes and participation in the extracurricular program of the schools that each pregnant student present to the Superintendent or designee a licensed physician’s written statement that such activity will not be injurious to her health nor jeopardize her pregnancy.”

OCR requested the District provide its policies and procedures pertaining to students with temporary disabilities. In response to this request, the District provided Policy 234, not a policy concerning other students with temporary disabilities.

OCR also reviewed the District’s policy on athletic participation requirements, including return to play from injury. The School’s “Return to Play Criteria” states:

Following a complete physical assessment, the certified athletic trainer(s) may, at his or her discretion and in accordance with approved protocols, return a student-athlete to practice or competition unless the student-athlete is under the current (proximate) care of a licensed physician. When the student-athlete is under the care of a licensed physician, the certified athletic trainer must have written documentation for consideration of return to play. Final return to play decisions will be made in cooperation and agreement with the treating licensed physician, certified athletic trainer and in accordance with approved protocols, policies, and procedures. If a student-athlete is not being seen by a licensed physician following an injury, the certified athletic trainer will determine when the student-athlete returns to practice or competition.

The District also identified Board Policy 209 (Health Examination Screenings) as relevant to the allegation in this complaint. Board Policy 209 provides each student shall receive a health examination conducted by the school physician upon original entry, in sixth grade, and in eleventh grade. Additionally, “[w]here it appears to school health officials or teachers that a student deviates from normal growth and development, . . . the parent/guardian shall be informed; and a recommendation shall be made that the parent/guardian consult a private physician” and subsequently the parent “shall be required to report to the school the action taken subsequent to such notification.” If the parent fails to report the action taken, the school nurse “shall arrange a special medical examination for the student.” All District staff members are instructed to “continually observe students” for such conditions and report such conditions to the school nurse. The District references Pennsylvania law as the authority for Policy 209 which states: “All teachers shall report to the school nurse or school physician any unusual behavior, changes in physical appearance, changes in attendance habits and changes in scholastic achievement, which may indicate impairment of a child’s health. The nurse or school physician or school dentist may, upon referral by the teacher or on his own initiative, advise a child’s parent or guardian or the apparent need for a special medical or dental examination. If a parent or guardian fails to report the results to the nurse or school physician, the nurse or school physician shall arrange a special medical examination for the child.”

During its investigation, OCR asked District staff to describe how Board Policy 209 had been utilized at the School. Neither the Principal, the Athletic Director, nor the Coach could recall a

specific instance when Board Policy 209 had been utilized, except for the situation with the Complainant described below. The Counselor stated that, in a given school, year she reports a change in a student to the Nurse in accordance with Board Policy 209 about three times, typically due to weight loss and/or suspected drug abuse. The Nurse described a couple of instances when School staff reported conditions in accordance with Board Policy 209, including when a student was experiencing vision, hearing, or hygiene issues. No witness interviewed by OCR recalled ever using Board Policy 209 for a student who had gained weight.

OCR also reviewed the District's website to determine if it widely publishes the contact information for the Title IX Coordinator and the District's notice of non-discrimination. OCR could not locate the District's Title IX Coordinator on the District's website or the student handbook for [Redacted content]. On July 27, 2023, OCR requested the District identify its Title IX Coordinator. On August 1, 2023, the District identified the Assistant Superintendent as its Title IX Coordinator. Further, although the District includes its notice of non-discrimination in the student handbook for the [Redacted content] school year, the student handbook is difficult to find on the District website, and the District's notice of non-discrimination is not published anywhere else on its website.

[Redacted content]

[Redacted paragraph]

[Redacted paragraph]

[Redacted content]

[Redacted paragraph]

[Redacted paragraph]

[Redacted paragraph]

[Redacted paragraph]

[Redacted paragraph]

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[Redacted paragraph]

[Redacted paragraph]

[Redacted paragraph]

Legal Analysis

Title IX Coordinator and Notice of Non-Discrimination

OCR asked the District to identify its Title IX Coordinator and the District identified the Assistant Superintendent. However, OCR determined this information is not publicly available. The identity and contact information for the Title IX Coordinator are not found on the website or in any handbook. Further, the District's notice of non-discrimination is not widely published on the District's website.

Pregnancy Discrimination

[Redacted paragraph]

[Redacted paragraph]

[Redacted paragraph]

Board Policy 234 omits protections that the District shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. Board Policy 234 also omits language instructing the District treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability. Board Policy 234 does not detail circumstances in which a medical certification may be required.

Before OCR completed its investigation, the District requested to resolve the allegation through a voluntary resolution agreement. OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement pursuant to Section 302 of the CPM because OCR identified a concern regarding the District's response to the Complainant's perceived pregnancy,

and a concern regarding the District's policies and procedures addressing pregnancy discrimination and athletics.

Conclusion

Prior to OCR's completion of its investigation, the District requested to resolve the case through a voluntary resolution agreement on August 25, 2023, and OCR determined such a resolution was appropriate. The District signed the enclosed Voluntary Resolution Agreement (the Agreement) on September 12, 2023. The Agreement requires the District to revise its website and student handbook to include the Title IX Coordinator, notice of non-discrimination, pregnancy policy and procedures. The Agreement also requires that the District provide training to relevant School staff. 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, 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Spencer Plante at spencer.plante@ed.gov; 215-656-6022.

Sincerely,

/s/

Catherine C. Deneke
Supervisory Attorney
Philadelphia Office

Enclosure: Resolution Agreement

cc: Brian Taylor, Attorney for the District, btaylor@kingspry.com