



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

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November 25, 2014

Robert W. Runcie  
Superintendent of Schools  
Broward County School District  
600 SE Third Ave  
Ft. Lauderdale, FL 33301

Re: Complaint #04-13-1694

Dear Superintendent Runcie:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Broward County School District (District) alleging retaliation on the basis of sex. Specifically, the Complainant alleged that the District retaliated against the former coach, for filing a previous OCR complaint, by failing to renew her contract as a girls head coach for track and cross country for the 2013-2014 school year.

The complaint was investigated pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.

**Legal Issue**

- Whether the District subjected the former coach to retaliation by failing to renew her contract as a girls head coach for track and cross country for the 2013-2014 school year, in noncompliance with the Title IX implementing regulation at 34 C.F.R. § 106.71.

**Legal Standards**

The Title IX implementing regulation at 34 C.F.R. § 106.71, incorporating the procedural provisions of Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7, prohibits a recipient or other persons from retaliating against any individual for the purpose of interfering with any

right or privilege secured by Title IX, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title IX.

For a prima facie case of retaliation, four elements must be met: (1) the complainant engaged in a protected activity; (2) the recipient had knowledge of the protected activity; (3) the recipient took an adverse action against the person contemporaneous with or subsequent to the protected activity; and, (4) there is a causal connection between the protected activity and the adverse action. If all the elements of a prima facie case are met OCR then determines if the recipient has a legitimate non-discriminatory reason for its actions that are not a pre-text to discrimination.

In reaching a compliance determination, OCR reviewed documents provided by the District and the former coach pertaining to the issue of the complaint. Additionally, interviews were conducted with District administrators and staff, the Complainant and the former coach. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, (such as the District), failed to comply with the laws or regulations enforced by OCR or the evidence is insufficient to support such a conclusion. Based on its investigation, and applying the preponderance of the evidence standard, OCR has determined that there is insufficient evidence to support a finding of noncompliance against the District with respect to the issue investigated. The bases for this determination are set forth below.

### **Background**

The Complainant alleged that the District retaliated against the former coach, for filing a previous OCR complaint, by failing to renew her contract as a girls head coach for track and cross country for the 2013-2014 school year at Boyd Anderson High School (School).

The former coach began her employment as a teacher in the District on August 5, 2005 at the School and was involuntarily transferred to Plantation Middle School on July 6, 2012, for budgetary reasons. The former coach requested a transfer to Northeast High School for the 2013-14 school year which was approved, as of August 5, 2013. The former coach is currently employed as a certified Social Science teacher at Northeast High School.

The former coach was employed at the School as head coach for the girls track team and girls and boys cross country team from 2005-2013. When she was transferred to Plantation Middle School for the 2012-13 school year, she was rehired as the head coach at the School for that school year (2012-13). The former coach's coaching contract was not renewed for the 2013-14 school year.

### **Factual Findings and Analysis**

As noted in the regulatory authority section above, evaluation of a retaliation claim first requires a determination regarding whether the facts give rise to a prima facie case of retaliation.

1. Protected Activity and Actual or Constructive Knowledge of the Protected Activity

In support of the first two elements of the prima facie case of retaliation, the former coach notes that she filed a Title IX complaint with OCR alleging retaliation (OCR Complaint #04-13-1008) on October 5, 2012. According to the District, the Athletic Director (AD) and the Principal of the School were aware of the previous OCR complaint. The Principal was responsible for the investigation at the School level and the AD provided documentation and information for OCR's investigation as requested.

Based on the foregoing information, OCR finds that the former coach engaged in a protected activity under Title IX when she filed a Title IX retaliation complaint with OCR, and that the District had knowledge of the protected activity.

## 2. Adverse Action Contemporaneous With or Subsequent to Protected Activity

In support of the third element of the prima facie case of retaliation, the former coach alleged that the District subjected her to adverse action as a result of her filing a previous complaint with OCR, by failing to renew her contract as head coach for the 2013-2014 school year at the School.

In examining whether an action is adverse, OCR considers whether the alleged action significantly disadvantaged the individual in his or her ability to gain the benefits of the educational program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual's educational opportunities, the action could be considered to be retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claims. To make this determination, OCR considers whether the allegedly adverse action caused lasting and tangible harm, or had or could reasonably have a deterrent effect. Merely unpleasant, transient, or inconvenient incidents usually are not considered adverse. OCR makes this determination on a case-by-case basis and in light of all the facts and circumstances of the case.

It is undisputed that the former coach's coaching contract was not renewed for the 2013-14 school year which also resulted in a loss of supplemental pay. The former coach reported that she received notice of nonrenewal of the contract on May 31, 2013; thus the adverse action occurred subsequent to the protected activity.

Based on the foregoing information, OCR finds that the nonrenewal of the coach's contract constitutes an adverse action.

## 3. Causal Connection between Adverse Action and Protected Activity

In order to establish that the former coach has been a victim of retaliation there must be a causal connection between the adverse action that occurred and the protected activity engaged in. To determine whether a causal connection exists between the protected activity and the adverse action, OCR considers: (a) closeness in time between knowledge of the protected activity and the adverse action; (b) change in treatment after the School had knowledge of the protected activity; or, (c) treatment of the former coach compared to other similarly situated persons.

The former coach's protected activity occurred on October 5, 2012, the date Complaint #04-13-1008 was filed and OCR issued notification of the complaint to the District on November 22, 2013. OCR made its determination regarding the complaint filed by the former coach on March 21, 2013. According to the former coach, she was notified of the nonrenewal of her coaching contract on May 31, 2013. Based on the foregoing, there is sufficient temporal proximity to establish a causal connection between the former coach's protected activity and the subsequent adverse action.

#### 4. School's Legitimate Nondiscriminatory Reasons for the Adverse Action

Upon the establishment of a prima facie case of retaliation, the District is given an opportunity to provide a legitimate, non-retaliatory reason for the alleged retaliation. The District, therefore, offered its reasons for the nonrenewal of the former coach's coaching contract. According to the AD, coaching positions are yearly supplemental positions. All coaches are removed (contracts terminated) from the supplemental positions at the end of each school year. The positions are then advertised and the coaches have to reapply for the position. If chosen, the contract is renewed. The Principal and the AD stated that the Injured Party's contract was not renewed because her working hours prevented her from arriving at the School in a timely manner to supervise her athletes. Students are dismissed at the School where she was head coach at 2:30 pm. Students typically report to practice between 2:45 and 3:00 pm. The Injured Party worked at Plantation Middle School until 3:30 pm. and arrived at the School at 4:15 pm. As a result, the former coach was unable to arrive at the School in time to supervise her student athletes during practice and to accompany her athletes to competitive meets on the bus. According to the former coach and the assistant coaches, the assistant coaches were with the athletes until the former coach arrived. She would drive and meet the teams at the meets on occasion. According to the Principal and AD, it was becoming increasingly difficult to coordinate assistant coaches to fill in for the former coach. The Principal wanted to move in a different direction and try to hire someone on campus for the upcoming year to alleviate the instances where student athletes were unsupervised. To ensure that the student athletes were supervised at all times, the former coach's supplemental position as head coach was not renewed for the 2013-14 school year.

The District proffered instances of safety concerns for students. The District's Executive Director described one situation as follows.<sup>1</sup> One such incident was reported by the Student Resource Office (SRO). According to the SRO, adults without proper identification were on the track mixed in with students. Some of the students and coaches who were on the track had proper identification and others did not. The SRO was concerned and stated in his report that coaches and teachers should follow the Principal's directive and set an example for students by wearing their identification when on campus so that safety and security are not compromised. While the former coach's name was not mentioned in the SRO's report, the lack of proper supervision was addressed with her according to the AD.

The AD informed OCR of another instance in which the former coach's team members were transported to a meet with no adult supervision on the bus in addition to the bus driver, which is

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<sup>1</sup> The Executive Director submitted responses to OCR's data requests.

against the rules. The former coach met the team at the meet. The bus driver reported the instance; however, no disciplinary action was taken against the driver or former coach. The AD was not a witness to this incident.

Based on the foregoing information, OCR concludes that the District proffered a legitimate, non-retaliatory reason for not renewing the former coach's coaching contract at the School. Accordingly, OCR must next consider whether there is sufficient evidence to conclude that the District's proffered reason was actually a pretext for retaliation.

#### 5. Pretext

Pretext may be established by a showing that, for example: (1) the District's reasons for not renewing the supplemental position were not credible or were not the true reason for the adverse action; (2) the District treated similarly situated individuals differently by renewing their supplemental head coach position under the same or similar circumstances; or, (3) the District deviated from applicable policies and procedures or other guidelines.

The District's policy states that all vacancies in supplemental positions are advertised first within the school and then if not filled, advertised in all District schools and departments. If unsuccessful, the vacancy can be filled from the outside.

While the AD and Principal assert that the Injured Party's contract was not renewed because of her late arrival time, and that they prefer that head coaches are at school when school dismisses for the day, they acknowledge that there is not a required arrival time. Moreover, the evidence shows that the Complainant's 4:15 arrival time was approved by the AD on August 26, 2012. The assistant coaches, who included her husband and volunteer coaches filled in for her until she arrived for daily practices. These assistant coaches also accompanied the former coach's teams to meets on the bus and the former coach would drive separately and meet them there because her schedule did not allow her to ride on the bus with the students on occasion.

According to the former coach, her arrival time was approved by the AD on August 26, 2012, via text message, and the former coach arranged for assistant coaches to fill in for her until she arrived on campus. The AD agreed that she approved the Injured Party's arrival time on August 26, 2012 via text message and that the District did not foresee a problem with her arrival time. The AD contends that the Injured Party's arrival time became an issue as the season progressed. The AD reported that in the beginning the former coach's husband, an assistant coach, and other assistant coaches would fill in for her but later it became harder to coordinate assistant coaches to fill in for the former coach. OCR interviewed two assistant coaches; both stated that the practices were always covered by an assistant coach until the former coach's arrival and neither corroborated that it became harder for them to fill in for the former coach.

While the Principal and AD cited a safety concern raised by an SRO as an example of the need for coaches to arrive on time, the evidence shows that the cited incident was not related to the former coach's arrival time and the SRO did not report that he actually observed nonstudents mixed in with students on the track. In an email cited by both the Principal and as documentation of the incident, the SRO states that he observed nonstudents on the track at 6:03

p.m. after all coaches and track students had left the track.<sup>2</sup> Thus, there was nothing in the description of the incident that reflected safety concerns related to the former coach's 4:15 arrival time. Further, while other evidence reflects that concerns about unsupervised students were raised during December 2012, the evidence does not reflect that the concerns were about track students. The documented complaint about lack of supervision came from one of the former coach's assistant coaches, who stated that numerous unsupervised students were using the weight room as a "chill spot" and "DJ booth." In a subsequent email, sent after the SRO emailed the Principal to ask if the weight room should be shut down after a certain time, the assistant coach inquired about the paperwork needed to have access to the weight room; he stated that the boys and girls track students used the weight room as a part of practice and were always supervised while using the weight room.

The AD told OCR that she received a report that on one occasion students had been transported to a meet without adult supervision on the bus other than the driver. The AD did not purport to have personal knowledge that students were not supervised on the bus and evidence obtained during OCR's interview did not establish that the alleged incident occurred. The assistant coaches did not recall the students riding the bus unsupervised and one assistant coach stated that he rode the bus on every trip.

It is also noted that the contract of the Boys' track coach, who also worked at a different school, was renewed. The former coach's assistant coaches filled in for the Boys' track coach until he arrived. Two witnesses stated that the Boys' coach arrived by 3:00 pm.; one witness said that he arrived between 3:00 and 3:15 p.m. and occasionally did not attend a practice. While the evidence shows that when he reported for practice he generally arrived by 3:00 pm, one of the assistant coaches told OCR that he missed practice altogether on several occasions. Further, the evidence shows that the girls' and boys' track teams rode the same bus to meets, and when one of the assistant coaches served as the supervisor on the bus, he was filling in for the Boys' coach as well as the former coach.

Finally, OCR notes that the District identified one other coach who reportedly was not renewed because he could not get to the school on time. However, according to the AD, this coach was also involved in other personnel matters.

### **Analysis and Conclusion**

Based upon a review of the evidence under the preponderance of the evidence standard, OCR concludes that the evidence is sufficient to conclude that the District's legitimate, nondiscriminatory reasons were merely pretext for discrimination, in noncompliance with the applicable Title IX regulations regarding this issue.

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<sup>2</sup> The SRO stated that because the nonstudents told him that they "come and run the track 'all the time'" he surmised that they "must mix in with the other runners on the track." He did not say that he observed nonstudents and students on the track together, or that anyone reported to him that nonstudents were on the track while students were also on the track.

Therefore based on a preponderance of the evidence, the District is in noncompliance with Title IX. In order to resolve this compliance concern, the District voluntarily agreed to take corrective actions outlined in the enclosed Resolution Agreement (Agreement). OCR will monitor the implementation of the Agreement to ensure that it is fully implemented.

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. 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions about this complaint, please contact Lisa Murfree, at 404-974-9390 or Arthur Manigault, Compliance Team Leader at 404-974-9376.

Sincerely,

Cynthia G. Pierre  
Regional Director

Enclosure