

October 21, 2013

Dr. Jim Roberts
Superintendent
Batesville Community School Corporation
P.O. Box 121
626 N. Huntersville Road
Batesville, IN 47006

Re: OCR Docket # 05-13-1245

Dear Dr. Roberts:

This is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Batesville Community School Corporation (Corporation) alleging discrimination on the basis of sex and also alleging retaliation.

Specifically, the complaint alleged that:

1. in the 2012-2013 school year, the Corporation subjected a female high school student (Student A) to discrimination based on sex when other students subjected Student A to verbal and physical sexual harassment, including one incident of XXXXX, and the Corporation was aware of the harassment, but failed to take action to address it;
2. in March 2013, the Corporation subjected Student A to discrimination based on sex when Corporation personnel disciplined Student A more severely than it disciplined male students who engaged in similar conduct; and
3. in March 2013, the Corporation subjected Student A and her parent to retaliation for complaining about the sexual harassment, in that Corporation personnel disciplined Student A more severely than it disciplined other students who engaged in similar conduct.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 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. Title IX also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the Corporation is subject to this law.

OCR reviewed data provided by Student A's parent and the Corporation, and interviewed Student A, her parent, and Corporation personnel. Prior to the completion of OCR's investigation, the Corporation agreed to take actions to resolve allegation #1 in the complaint. OCR has determined that the evidence is insufficient to establish that the Corporation subjected Student A to discrimination based on sex or to retaliation with regard to allegations #2 and #3. The reasons for this determination are discussed below.

Facts

In the 2012-2013 school year, Student A was a XXXXX at Batesville High School (the School). On the first day of the school year, the School gave each student a laptop on which students could access instant messaging software, video software, and personal email accounts. The School's Student Code of Conduct includes a Respectable Use Policy governing the use of those laptops. Each School student was required to sign an acknowledgement form certifying that he/she read and understood the Respectable Use Policy. Among other requirements, students must agree to conduct themselves in a responsible, safe, ethical, and legal manner while using the School's computer network, use polite and appropriate language in all communications on School computers used in and out of the School, and refrain from using any form of digital communication to insult, harass, intimidate or bully anyone.

In October 2012, Student A complained to the Principal that she had received harassing messages on her School laptop from a XXXXX male student (Student B). Student A stated that she, her parent, and another female student (Student C) reported the harassing messages to the Principal. In addition, on February 11, 2013, Student A and her parent reported that Student B XXXXX Student A.

In spring 2013, after learning of potential misconduct by Student A and other students, the Corporation investigated these students' use of School laptops and determined that eight students including Student A, two other female students and five male students, had violated the Respectable Use Policy. All students were initially recommended for XXXXX, but received lesser discipline sanctions after entering into an agreement with the Corporation.

Four students, namely Student A and Student C, who are female, and two male students, were XXXXX for their violations of the Respectable Use Policy. Student A and a male student were found to have used their computers to XXXXX at school, one male student was found to have XXXXX on his computer, and Student C was found to have XXXXX on her computer and also was found to have engaged in inappropriate conversations on the computer. The other four students, one of whom is female and three of whom are male, engaged in inappropriate conversations on their computers and were XXXXX and were allowed to XXXXX for the remainder of the spring 2013 semester.

The Assistant Principal stated that although all eight students were disciplined for violations of the Respectable Use Policy, four students were disciplined more severely because of the severity of the violations or, in the case of one student, because of previous offenses.

The Corporation reported that no other students were disciplined for violating the Respectable Use Policy in the 2012-2013 school year. While Student A and Student C had previously complained of sexual harassment, none of the other students disciplined for violating the Respectable Use Policy had previously complained of sexual harassment or sex discrimination.

Analysis and Conclusions

Allegation #1

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the Corporation expressed interest in resolving allegation #1 in the complaint. Subsequent discussions with the Corporation resulted in the Corporation signing the enclosed Resolution Agreement (Agreement) which, when fully implemented, will resolve the issue raised in allegation #1. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the Corporation's implementation of the Agreement.

Allegation #2

The complaint alleges that, in March 2013, the Corporation subjected Student A to discrimination based on sex when Corporation personnel disciplined Student A more severely than it disciplined male students who engaged in similar conduct.

The Title IX regulation, at 34 C.F.R. § 106.31(b)(1)-(4), provides that a recipient may not, on the basis of sex, treat one person differently from another in determining whether such person 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; deny any person such aid, benefit or service; or subject any person to separate or different rules of behavior, sanctions, or other treatment.

In analyzing an allegation of different treatment based on sex under Title IX, OCR ascertains whether there were any apparent differences in the treatment of similarly situated individuals on the basis of sex. If this is found to be the case, then OCR assesses the recipient's explanation for any differences in the treatment to determine whether the reasons are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. In determining pretext, OCR examines whether the recipient treated the student in a manner that was consistent with its established policies and procedures and whether there was any other evidence of discrimination on the basis of sex.

The evidence established that Student A and seven other students were disciplined for violating the Respectable Use Policy in the 2012-2013 school year. OCR determined that these seven

students, a group that included five male students, were similarly situated to Student A, in that they were disciplined for violating the same policy. While all eight students were XXXXX, four, including three male students, received a less severe sanction than Student A and were XXXXX after XXXXX, while Student A was XXXXX.

OCR assessed the Corporation's explanation for the differences in the treatment of Student A and three male students who were not expelled to determine whether the reasons are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. The evidence established that Student A was disciplined more severely than these three male students because unlike the three male students, in addition to violating the Respectable Use Policy by having inappropriate conversations, she had XXXXX. The Corporation determined that this was a more severe offense than the three male students' offenses. The evidence established that the male student who engaged in the same conduct as Student A, namely violating the Respectable Use Policy and XXXXX, received the same discipline, indicating that the Corporation's reason for its treatment of Student A was not a pretext for discrimination on the basis of sex. OCR also notes that, among the seven students similarly situated to Student A, there were two male students who received the same discipline as Student A and one female student was treated less severely than Student A. OCR found no other evidence to suggest that Student A was subjected to discrimination on the basis of sex.

Based on the foregoing, the evidence is insufficient to establish that the Corporation subjected Student A to discrimination based on sex as alleged in allegation #2 of the complaint.

Allegation #3

The complaint alleges that, in March 2013, the Corporation subjected Student A and her parent to retaliation for complaining about the alleged sexual harassment, in that Corporation personnel disciplined Student A more severely than it disciplined other students who engaged in similar conduct.

The Title IX implementing regulation, at 34 C.F.R. § 106.71, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e). The regulation prohibits recipients from intimidating, threatening, coercing or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because the individual has made a complaint or participated in any manner in an investigation or proceeding under the regulation.

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (e.g., opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action. If all of the elements of a *prima facie* case of retaliation are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the

adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that treatment of the person was inconsistent with the treatment of similarly situated individuals or established policy or practice.

The evidence established that Student A and her parent engaged in protected activities of which the Corporation was aware by complaining to School personnel of sexual harassment in fall 2012 and February 2013. The evidence also established that Student A was subjected to an adverse action when she was XXXXX. Because of the proximity in time between the protected activity in February 2013 and the adverse action in March 2013, OCR determined that there is a causal connection between the protected activities and the adverse action. Therefore, the evidence establishes a *prima facie* case of retaliation.

As noted above, the evidence established that Student A violated the Respectable Use Policy when she XXXXX. The evidence established that Student A engaged in more serious violations of the policy than the four students who were not XXXXX. Two other students who were also XXXXX had not engaged in activities protected by Title IX, and the one student who engaged in the same conduct as Student A was likewise XXXXX. Under these circumstances, the evidence is insufficient to establish that the Corporation's reasons for the discipline imposed on Student A were a pretext for retaliation.

Based on the foregoing, the evidence is insufficient to establish that the Corporation subjected Student A or her parent to retaliation as alleged in allegation #3 of the complaint.

Please be advised that the Corporation 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 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 privacy.

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

We wish to thank the Corporation for the courtesy and cooperation extended by its staff during the investigation. If you have any questions, please contact Sunita Kini-Tandon, Civil Rights Attorney, at 312-730-1452 or by e-mail at Sunita.Kini-Tandon@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure