



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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July 17, 2019

Ms. Sandra Wood  
Superintendent  
Metropolitan School District of New Durham  
207 East Valparaiso Street  
Westville, IN 46391

Re: OCR # 05-17-1174

Dear Ms. Wood:

This is to advise you of the resolution of the above-referenced complaint against Metropolitan School District of New Durham (District).

Specifically, the complaint, which was filed February 13, 2017, alleged that in the 2015-2016 and 2016-2017 school years, a basketball coach (the Coach) discriminated against a female high school student (Student A) on the basis of sex and created a sexually hostile environment for Student A and the District did not respond effectively. The complaint also alleges that students subjected Student A to harassment based on sex and the District did not respond effectively to the harassment of which it had notice.

OCR is responsible for enforcing 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. 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 Title IX.

During the investigation and prior to OCR making a final determination, the District expressed an interest in resolving the allegation under Section 302 of OCR's *Case Processing Manual* (CPM) and OCR determined that it was appropriate to resolve the allegation with an agreement. On March 7, 2019, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the allegation in the complaint. OCR will monitor the implementation of the Resolution Agreement.

**Applicable Legal Standards**

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), states 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 educational program or activity operated by a recipient of Federal financial assistance.

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

The Title IX regulation contains a number of procedural requirements, including that recipients publish a notice of nondiscrimination covering Title IX and adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

In determining whether sexual harassment has created a hostile environment based on sex, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, the location of the incidents, and the context in which they occurred; and other incidents at the school.

Harassment based on sex-stereotyping, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program.

Under Title IX, a school has a responsibility to respond promptly and effectively to sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

## **Facts**

### 2015-2016 School Year

Student A told OCR that during practices the Coach singled her out and called her a "boy" or "he" about two to three times per week. The Coach told OCR that if he did refer to Student A in this manner, it may have been in the context of referring to all the players, such as "Come on guys." The JV coach told OCR that on maybe one occasion the Coach referred to Student A as a "he" at a practice with other students present, making a comment like "... and he went that way when it was supposed to be this way." The JV coach told OCR that she had not heard the Coach call Student A a "boy."

### 2016-2017 School Year

Student A told OCR that during practices the Coach continued to single her out and called her a "boy" or "he" about two to three times per week, which the Coach denies.

According to the complaint, on December 30, 2016, Student A and the Coach argued on the sidelines when the Coach heard Student A say something to comfort another player who had been taken out of the game even though she had followed the Coach's instructions; Student A's parent told OCR the Coach continued to yell at Student A in the locker room, screaming her name, kicking things, overturning a desk, and telling Student A he has been "done with her" for a

long time. Student A went to get her parent, and they returned the locker room, where Student A confirmed with the Coach that he was kicking her off the team, and he said, “Yes, get out of here.”

The Coach said a player had failed to cover her assigned opponent, so he yelled from the bench at the player. He said Student A got involved from the bench, making a comment to the other player. He said he kicked a piece of furniture in the locker room and it slid parallel to a wall, not toward players, and said, “[Student A], I am about through with you.” He said by the time he got back to the bench from the locker room, Student A and her parent wanted to know if Student A had been kicked off the team. He said, “I told you I was just about through with you.” He said the parent then said they needed to know for sure. He said to her, “If that is what you want then you are off the team.”

The Principal said she became aware of the December 30 incident a few days later after a social media post from Student A’s parent was brought to her attention. She said she asked the Athletic Director/Assistant Principal (AD/AP) to investigate. The AD/AP interviewed 11 other players, and the District provided OCR with the notes from these interviews. One student reported that she heard the coach call Student A a “he” on at least one occasion, so the AD/AP asked the other players, but they reported not hearing such a remark; some said they believed if the Coach called Student A “he” it was accidental or inadvertent. The Principal said that after completing his investigation, the AD/AP recommended to her and the Superintendent no formal consequences for the Coach, and they agreed with the recommendation.

The AD/AP said he did not interview Student A during the investigation nor did he contact the parent regarding the outcome of the investigation. He further explained to OCR that the reason for the investigation was the coach’s alleged behavior in the locker room, not possible harassment of Student A based on sex-stereotyping.

Student A also said one other teammate harassed her on one occasion after she cut her hair. She said a different teammate once referred to her as “he/she,” and the Coach smirked. The Coach told OCR he had no knowledge that any such incident occurred. Student A also said students referred to her as a “he/she” in class. Student A’s parent said that she contacted the School to report the incident, but nothing was done to address it. The Principal said she was not aware of any such report.

### **Analysis and Conclusion**

Prior to OCR making a final determination, the District expressed an interest in resolving the allegation and OCR determined that it was appropriate to resolve the allegation with an agreement. Based on its investigation to date, OCR identified concerns regarding the District’s notice of nondiscrimination in that it does not specifically state that Title IX prohibits discrimination based on sex or provide contact information for OCR. OCR also has concerns that provisions of the District’s policies, procedures and administrative guidelines that address allegations of sexual harassment conflict. In addition, OCR has concerns that the District had notice of alleged harassment based on sex, but failed to respond effectively, including not

notifying Student A or her parents regarding the outcome of the District’s investigation and addressing other reports of sex-based harassment.

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.

Please be advised that the District may not harass, coerce, intimidate or discriminate against any individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the individual 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.

Thank you for your assistance and cooperation during OCR’s investigation; in particular, we would like to thank Mr. William Kaminski, counsel for the District. If you have questions about this letter, you may contact Salina Gamboa, Senior Equal Opportunity Specialist, at (312) 730-1627 or by email at [Salina.Gamboa@ed.gov](mailto:Salina.Gamboa@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: William Kaminski