



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., 1620  
DALLAS, TX 75201-6810

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

**June 5, 2014**

Mr. Jarod Bellar, Superintendent  
Baird Independent School District  
600 West 7th, P.O. Box 1147  
Baird, Texas 79504

RE: OCR Case No. 06141100  
Baird Independent School District

Dear Mr. Bellar:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint, which was received by OCR on December 3, 2013. This complaint was filed against the Baird Independent School District (BISD), in Baird, Texas, alleging discrimination on the basis of sex. Specifically, the complainant alleged that the BISD discriminated against XXXX XXXX (the Student), a XXXX at Baird High School (BHS), because XXXX XXXX XXXX, by excluding her from cheerleading activities (e.g., X---phrase redacted---X) and by failing to address the sex-based harassment directed toward her (e.g., X---phrase redacted---X).

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681, and its implementing regulations, at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex, or gender, in education programs and activities. The BISD is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to process this complaint for resolution under Title IX.

OCR opened the above allegations to investigate the following issues:

1. Whether, during the 2013-2014 school year, the BISD discriminated against the Student on the basis of sex (XXXX) by excluding her from cheerleading activities (e.g., X---phrase redacted---X), in violation of Title IX, at 34 C.F.R. § 106.40.
2. Whether, during the 2013-2014 school year, the BISD discriminated against the Student on the basis of sex by failing to take prompt and effective corrective action reasonably calculated to end the sex-based harassment directed toward her, which was sufficient to constitute a hostile environment, of which the BISD had actual or constructive notice, in violation of Title IX, at 34 C.F.R. §106.31.

During the course of this investigation, OCR reviewed BISD policies and procedures, BISD Cheer team photographs and schedule, and written statements signed by BISD employees. OCR conducted interviews of BISD employees, BISD students, the Student and third party witnesses.

OCR applies a preponderance-of-the-evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

### **Issue 1**

The Title IX implementing regulation provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by recipients of Federal financial assistance from the Department. 34 C.F.R. § 106.31. The regulation, at 34 C.F.R. § XXXX, also prohibits recipient institutions from discriminating against a student or excluding the student from its education program or activity on the basis of the student's X---phrase redacted---X. In addition, the regulation, at 34 C.F.R. § XXXX, prohibits a recipient from applying any rule concerning a student's X---phrase redacted---X which treats students differently from other students on the basis of sex. The Title IX implementing regulation, at 34 C.F.R. § XXXX, requires recipients to treat X---phrase redacted---X.

A student X---phrase redacted---X. 34 C.F.R. § XXXX. The Title IX implementing regulation, at 34 C.F.R. § XXXX, further states, in relevant part, that, in the case of a recipient which X---remainder of paragraph redacted---X.

During the course of this investigation, OCR found evidence that the BISD informed the Student that she could not cheer X---phrase redacted---X. The evidence indicated that the BISD's XXXX XXXX was not based on X---phrase redacted---X. The evidence also showed that the BISD did not place this XXXX XXXX on any other (XXXX) participant on the BISD Cheer team.

The evidence also showed that the Student was not included in the Cheer team's X---phrase redacted---X. The evidence suggests that the Student told X---phrase redacted---X. Further, OCR found evidence that the Student did not receive a X---phrase redacted---X, although the other Cheer team members received them. However, after the Student complained to the BHS XXXX about these things, the Student was later provided the XXXX XXXX XXXX and the XXXX promised to make sure the Student would X---phrase redacted---X.

### **Issue 2**

The Title IX regulation, at 34 C.F.R. § 106.31, provides 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 academic education program operated by a recipient that receives Federal financial assistance. Sex-based harassment of students, including X---phrase redacted---X, is a form of prohibited sex discrimination. OCR has defined sexual harassment as unwelcome conduct of a

sexual nature that has the effect of interfering with, denying, or limiting, on the basis of sex, a student's ability to participate in or to benefit from any education program or activity. Harassing conduct can take many forms, including verbal acts and name-calling, graphic and written statements, and other conduct that may be humiliating or physically threatening or harmful. Particular actions that could constitute prohibited harassment include making sexual comments or jokes about XXXX XXXX XXXX, calling XXXX XXXX sexually charged names, spreading rumors about XXXX XXXX XXXX, and making sexual propositions or gestures. Hostile environment sexual harassment is conduct that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program or create a hostile or abusive educational environment.

If a District knows or should know that a student has been subjected to sex-based harassment, it is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. In analyzing a Title IX sexual harassment allegation, OCR will consider whether: (1) the school has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) the school appropriately investigated or otherwise responded to allegations of sex-based harassment; and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

The Title IX implementing regulation, at 34 C.F.R. § 106.8(b), requires a recipient to 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. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: notice of the procedure, including where complaints may be filed; application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints; designated and reasonably prompt timeframes for the major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that the recipient will take steps to prevent recurrence of any sex discrimination found to have occurred, and to correct any discriminatory effects on the grievant and others, if appropriate.

The Title IX regulation at 34 C.F.R. § 106.8(a) requires that each recipient of Federal financial assistance from the Department designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including the investigation of any complaint communicated to the recipient alleging its noncompliance with Title IX. The recipient is further required to notify all students and employees of the name or title, office address, and telephone number of its designated Title IX coordinator(s).

The Title IX regulation at 34 C.F.R. § 106.9(a) states that each recipient shall implement specific and continuing steps to notify students, employees and others that it does not discriminate on the basis of sex in the educational program or activity it operates, and that it is required by Title IX not to discriminate in such a manner. The Title IX regulation at 34 C.F.R § 106.9(b) requires recipients to publish and prominently display their notice of nondiscrimination in each

announcement, bulletin, catalog, or application form used in connection with the recruitment of students or employees.

During the course of this investigation, OCR found that the BISD has a Title IX Coordinator and a Statement of Nondiscrimination, as required by Title IX and its implementing regulations. OCR reviewed the BISD's Title IX grievance procedure and found that it: lacked opportunity to parties to present witnesses and other evidence; failed to provide written notice of the outcome of the complaint to the parties; was unclear in its applicability to third parties; and contained an inaccurate definition of "sexual harassment." Further, the evidence indicated that the BISD was aware of allegations that: X---remainder of paragraph redacted---X.

Prior to the completion of OCR's investigation, the BISD expressed a desire to voluntarily resolve the complaint. Consistent with Section 302 of OCR's Complaint Processing Manual, the BISD submitted the attached Resolution Agreement (Agreement) on June 4, 2014, which OCR has determined addresses the compliance issues alleged in the complaint and which, when fully implemented, will resolve this complaint.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by the BISD to determine whether the commitments made by the BISD have been implemented consistently with the terms of the Agreement. If the BISD fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the BISD determines a need to modify any portion of the Agreement, the BISD may submit, for consideration, proposed revisions to OCR.

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 OCR procedures, we are obligated to advise the complainant and the institution against which a complaint has been filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

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.

OCR appreciates the cooperation and assistance of the BISD in coordinating the complaint resolution activities. If you have questions or concerns, please contact Tiffany Gray, the assigned investigator, at (214) 661-9611 or Gregory McGhee, Team Leader at (214) 661-9600.

Sincerely,

/s/

Taylor D. August, Director  
Office for Civil Rights  
Dallas Office

Enclosure