



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

November 8, 2018

Superintendent Ember Conley
Mesa Public School District
63 East Main Street, #101
Mesa, Arizona 85201

Via email only to ceconley@mpsaz.org

Re: Mesa Public School District
OCR Case Number: 08-16-1138

Dear Dr. Conley:

We have completed our investigation of case number 08-16-1138, which we received on January 25, 2016, alleging Mesa Public School District (District) discriminated against the Complainant's son (Student) on the basis of sex. OCR investigated whether the District disciplined the Student more harshly than another student involved in the same incident based on sex; failed to respond appropriately to sex-based harassment against the Student; and failed to allow the Student to use the locker room of the sex with which he identifies.

We investigated this complaint under Title IX of the Education Amendments of 1972 and its implementing regulation at 34 Code of Federal Regulations Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department). As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

In the course of the investigation, OCR reviewed documents provided by the District and the Complainant. We also interviewed the principal involved in the allegations. With regard to the allegation of different treatment in discipline, OCR found insufficient evidence of a violation. Additionally, with regard to the allegation involving the use of the locker room, OCR determined that this allegation is no longer appropriate for further investigation. The reasons for these determinations are explained in this letter. Finally, with regard to the allegation of sex-based harassment, prior to the completion of OCR's investigation, the District agreed to resolve this allegation pursuant to Section 302 of OCR's Case Processing Manual. We determined it was appropriate to resolve this allegation without completing a full investigation of this issue.

Legal Standards

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in,

denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

Disparate Treatment in Discipline

To determine whether a student has been discriminated against on the basis of sex under Title IX, OCR looks at whether there is evidence that the student was treated differently than students of another sex under similar circumstances, and whether the treatment has resulted in the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the District provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the District's actions were based on the student's sex.

X-Sentence redacted-X The Complainant alleged the District disciplined the Student more harshly than a female student involved in the same drug offense at school. X-Sentences redacted-X

X-Paragraph redacted-X

On July 19, 2016, OCR interviewed the Complainant to obtain her rebuttal. The Complainant stated that she does not know why the Student received a 10 day suspension. X-Sentences redacted-X The Complainant provided no further information to refute the District's position.

X-Sentence redacted-X The District's discipline policies make a distinction between distribution and possession of drugs, with distribution being a more serious offense. As a result, we determined that the circumstances surrounding the discipline of the Student and the comparator student are not similar. Furthermore, the District provided a legitimate, non-discriminatory reason for the disciplinary action taken against the Student, and OCR's investigation revealed no evidence of pretext. The District followed its discipline policy, and OCR's investigation did not find information to indicate that the District considered the Student's sex when administering the discipline. Based on the foregoing, OCR finds insufficient evidence that the District discriminated as alleged.

Sex-Based Harassment

X-Sentence redacted-X The Complainant said she reported this to the District but did not hear back from the District about her complaint.

During the investigation of this allegation, OCR interviewed the Complainant and District staff and reviewed documentation provided by the District. On August 31, 2018, the District informed OCR that it wished to voluntarily resolve the complaint allegation. Prior to OCR making any findings of fact, the District agreed to sign an Agreement on November 5, 2018, which, when fully implemented, will address this allegation.

In accordance with Section 302 of OCR's *Case Processing Manual* (CPM), the provisions of the Agreement signed by the District are aligned with the complaint allegation and the information obtained during OCR's processing of this case, and consistent with the applicable regulations.

Therefore, OCR is closing this complaint investigation effective the date of this letter. OCR, however, will actively monitor the District's implementation of the Agreement until the District fulfills the terms of the Agreement. If the District fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement or resume its investigation of the initial allegations. A copy of the Agreement is enclosed.

Use of Locker Rooms

The Complainant alleged that the District failed to allow the Student to use the locker room of the sex with which he identifies X-Redacted-X. On February 22, 2017, OCR and the U.S. Department of Justice issued a letter withdrawing their joint Dear Colleague Letter on Transgender Students, issued on May 13, 2016. In light of this withdrawal, OCR is closing this case because the facts presented with respect to this allegation are no longer appropriate for investigation.

Conclusion

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. We are closing the investigation of this complaint effective the date of this letter.

Please note a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. The District is prohibited from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation. If this happens, the Complainant may file another complaint alleging such treatment.

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.

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, personal information, which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact XXXX, the Equal Opportunity Specialist assigned to this complaint, at (303) 844-XXXX by email at XXXX. You also may contact me at (303) 844-XXXX.

Sincerely,

/s/

Sandra J. Roesti
Supervisory Attorney

Cc (via email only): Thomas Pickrell, General Counsel
Diane Douglas, Superintendent of Public Instruction