



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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May 21, 2020

Dr. Thomas S. Tucker
Superintendent
Douglas County School District RE-1
620 Wilcox Street
Castle Rock, CO 80104

By Email only to XX

Re: Douglas County School District
OCR Reference No.: 08-20-1135

Dear Dr. Tucker:

On December 13, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging the Douglas County School District (District) discriminated against a student (Student) on the basis of sex. Specifically, the Complainant alleged that the District treats the indoor girls' sports teams differently than the indoor boys' sports teams with respect to having closed tryouts.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation of this complaint pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under the statute cited are protected from retaliation, intimidation, or coercion by recipients of Department funds. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulation. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

Investigation Summary

OCR notified the District and the Complainant on February 13, 2020, that OCR opened the allegation for investigation.¹ OCR's investigation focused on obtaining the evidence necessary to determine whether the District complied with the legal standard stated below, or whether the District engaged in discrimination as alleged. Specifically, the investigation consisted of

¹ In the February 13, 2020, notification letter, OCR also indicated that it opened an allegation of retaliation for investigation. OCR subsequently dismissed the allegation of retaliation on March 6, 2020. A dismissal letter was issued on the same date.

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

requesting and reviewing records and information from the Complainant and the District, including the:

- District’s policies and procedures regarding open and closed tryouts for high school indoor sports;
- number of tryouts, open and closed, for high school indoor sports teams conducted at each high school during the 2018-19 and 2019-20 school years;
- rationale for open versus closed tryouts for high school indoor sports teams at each high school during the 2018-19 and 2019-20 school years; and,
- documentation provided by the District to parents, students, and/or the general public regarding tryouts for high school indoor sports teams during the 2018-19 and 2019-20 school years.

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 or is insufficient to support the conclusion.

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. §106.31(a), 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 education program or activity operated by a recipient of Federal financial assistance.

To determine whether an individual has been discriminated against on the basis of sex, OCR looks at whether there is evidence that the individual was treated differently than individuals of a different sex under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the recipient 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 recipient’s actions were based on the individual’s sex.

OCR also examines whether there was any evidence to suggest that the recipient treated the student(s) in a manner that was inconsistent with its established policies and procedures or whether there was any other evidence of prohibited discrimination.

Background

The District has nine high schools² which offer boys’ and girls’ indoor sports. Many of the indoor sports teams conduct tryouts for placement on the team through an open or closed

² The District provided OCR with information regarding its traditional high schools; OCR did not receive nor review data regarding the charter schools authorized within the District.

selection process, though some teams are not cut sports and therefore do not hold tryouts. Open tryouts generally permit spectators to observe the tryout process, while closed tryouts generally prohibit spectators. The District does not have a uniform, District-wide policy requiring open or closed tryouts; rather, the District permits each school to determine whether the tryout process is open or closed. The decisions vary further from sport to sport.

There are 67 indoor sports teams within the District's nine high schools, of which approximately two-thirds are girls' teams and one-third are boys' teams. Within the 67 teams, OCR identified 22 teams in which the girls' and boys' teams were similarly situated within the same high school; for example, a high school that offers both girls' and boys' basketball or girls' and boys' diving. The 22 teams identified consist of 11 girls' teams and 11 boys' teams. Based on the information provided by the District, OCR determined that four high schools in the District approach the tryout process the same for girls' and boys' teams (i.e., the tryout process is closed for both the girls' and boys' basketball team), while the remaining five high schools approach the tryout process differently for girls' and boys' teams (i.e., the tryout process for the girls' basketball team is open while the tryout process for the boys' basketball team is closed). Within the high schools where the approaches differ between the girls' and boys' teams, 10 of the 22 teams identified are impacted by the differing approaches.

The District provided the rationale for each team's approach to the tryout process. The high schools wherein the approach to the tryout process is different offered the following explanations as to why one team held an open tryout while the other team held a closed tryout:

High School #1:

- Girls' Basketball: "Open. Coach supports parents stopping by and watching tryouts, but has never had a parent stay the entire time."
- Boys' Basketball: "Closed. Athletes face less pressure. Additionally, there is not room in the practice gym for spectators."

High School #2:

- Girls' Basketball: "Open. However, no one attended."
- Boys' Basketball: "Closed. Helps students be more independent."

High School #3:

- Girls' Basketball: "Closed. Athletes face less pressure when tryouts are closed to spectators."
- Boys' Basketball: "Open. [No explanation.]"

High School #4:

- Girls' Basketball: "Open. This allows transparency. However, allowing parents to attend does create added stress and pressure on the students."
- Boys' Basketball: "Closed. This alleviates stress on the athlete and creates a better learning environment."

High School #5

- Girls' Basketball: "Open. That way parents can observe."
- Boys' Basketball: "Closed. It creates less pressure on the athletes."

The District disputed that the process selected by each school and team resulted in discrimination and proffered an explanation regarding the different treatment between girls' and boys' indoor teams with regard to open and closed tryouts. Specifically, the District stated that the basis for the difference of treatment was not based on the sex of the athletes. On May 5, 2020, before OCR had the opportunity to fully investigate the District's explanation and determine whether the reason for the difference of treatment was nondiscriminatory, the District notified OCR that it was interested in resolving this allegation.

Analysis

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that this allegation may be appropriately resolved through an agreement under Section 302 of the CPM. On May 20, 2020, OCR received the District's signed resolution agreement (Agreement) (enclosed). Accordingly, this allegation is closed as of the date of this letter and OCR will monitor the Agreement to ensure compliance.

Conclusion

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Title IX, and its implementing regulations. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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 complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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, it 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 XXX, the Attorney assigned to this complaint, at XXX or by email at XXX. You also may contact me at XXX or by email at XXX.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Enclosures – Resolution Agreement

cc: Dr. Katy Anthes
Commissioner of Education
Via email only to XXX

Ms. Mary Gray, Esq.
Attorney
Semple, Farrington, Everall & Case, P.C.
Via email only to XXX