



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

April 18, 2017

Mr. David Peterson
Superintendent
Nampa School District 131
619 South Canyon Street
Nampa, Idaho 83686-6634

Re: Nampa School District 131
OCR Reference No. 10171030

Dear Mr. Peterson:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against the Nampa School District 131 (the district). As explained below, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegations.

OCR accepted the following allegations for investigation: (1) whether the district treated female volleyball players at XXXXXXXXXXXX (the school) differently on the basis of sex by disciplining them more harshly than male football players for the same conduct; and (2) whether the district failed to comply with Title IX of the Education Amendments of 1972 (Title IX) by not having appointed a Title IX coordinator and not having notified students and employees of the responsible employee.

OCR accepted this complaint for resolution under the authority of Title IX and its implementing regulations. This statute prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance from the Department. The district is a recipient of federal financial assistance from this Department and is therefore subject to Title IX.

Allegation No. 1

Allegation No. 1 is that the district treated female volleyball players at the school differently on the basis of sex by disciplining them more harshly than male football players for the same conduct. The Code of Federal Regulations (C.F.R.) for Title IX at 34 C.F.R. § 106.31(a) prohibits sex discrimination in any education program or activity receiving federal financial assistance. 34 C.F.R. § 106.31(b)(4) and (7) prohibit a recipient from subjecting any person to different treatment in discipline on the basis of sex. A district violates Title IX's prohibition on disparate discipline when it (1) disciplines the students as part of an education program or activity receiving federal financial assistance, (2) provides different discipline

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

to students on the basis of sex, and (3) has no legitimate, non-discriminatory reason for the difference in discipline.

The investigation of this allegation to date indicated that students at the school participated in a social media game where they would “roast” other students at the school. Some, but not all, of the students who participated in this game were members of the cheer, football, and volleyball teams. The cheer and volleyball teams were made up of female students, and the football team was made up of male students. School officials learned of the game and decided that the behavior warranted discipline.

The investigation revealed that the school allowed coaches to discipline students involved in its athletics program because participation in the game was deemed a violation of the district’s Interscholastic Activities Policy regarding hazing and because it was a first offense for the involved students. The discipline was then subject to review by the principal. The district stated that coaches for each team did not consult one another in reaching their decisions for their players. The coaches made a determination regarding what discipline to impose based on their expectations of the individual player. Each member of the cheer team received the same discipline as every other member of the cheer team; similarly, each member of the football team received the same discipline as every other member of the football team. The volleyball players were all initially disciplined the same as one another, but after the complainants retained legal counsel, their daughter (hereinafter, “the student”) received half the penalty of the other volleyball players.

With the exception of the alternate discipline provided to the student, the discipline imposed was: male football players were not allowed to play for one quarter out of one game, each game has four quarters, and there were six games in a season; female cheer team members were not allowed to participate in one game, and there were three games in a season; female volleyball players were not allowed to participate in two matches, and there were 12 matches in a season.¹ Both the Executive Director of Secondary Education (EDSE) and the Assistant Superintendent for Teaching and Learning (Assistant Superintendent) indicated that they believe the inequity in the discipline may violate Title IX.²

Based on the investigation to date, OCR has a concern that the district imposed different discipline based on the students’ sex and that there was no legitimate non-discriminatory reason for the different discipline imposed. The cheer athletes and the volleyball athletes, both female, were suspended from playing for one game out of three games and two matches out of 12 matches respectively. In order to complete its investigation and make a determination as to compliance with Title IX, OCR would need to conduct interviews to establish whether the discipline imposed violated Title IX.

For example, OCR would need to interview coaches in order to determine whether there was a legitimate non-discriminatory reason for the difference in discipline and confirm the discipline process described by the district. As the district has stated that the discipline was applied based on the expectations for each player, OCR would need to interview coaches in order to know what their expectations were of the various volleyball, football, and cheer athletes. OCR would also need to interview the school’s athletic

¹ Idaho State High School Activities Association rules for high school volleyball require varsity matches to consist of the best of three of five games. But sub-varsity matches may only consist of best out of two of three games. It is unclear at this point in the investigation whether the school plays best of three of five games or best of two of three games.

² The district has not yet provided OCR with information indicating how they arrived at this conclusion.

director to determine the duration of a middle school girls' volleyball match, boys' football quarter, or girls' cheer match and how much of each match or quarter each individual student generally participates in. Finally, both the EDSE and the Assistant Superintendent would need to be interviewed regarding their statements that they believe the discipline may have violated Title IX.

Allegation No. 2

Allegation No. 2 is that the district failed to comply with Title IX by not having appointed a Title IX coordinator and not having notified students and employees of the responsible employee. The Title IX regulation at 34 C.F.R. § 106.8(a) requires that the Title IX coordinator who is the designated employee to coordinate Title IX compliance, be properly identified, and adequately trained. The investigation of this allegation to date showed that the student handbook refers individuals seeking to make complaints about Title IX to the "building administrator." The Title IX coordinator is identified by name, though not title, on the district's website. She is identified as the district's employee designated to receive and respond to Title IX concerns, and her phone number and address are provided. The individual identified is the Assistant Superintendent.

Based on the investigation to date, OCR finds that the district has demonstrated that it has designated a Title IX coordinator, the Assistant Superintendent. However, OCR has a concern that students and employees are not adequately notified of the Title IX coordinator. Although her information is available online, the print publication provided thus far to OCR refers students and employees to the building administrator. OCR would need to conduct interviews in order to determine whether the Title IX coordinator's information is publicized in another way. OCR would also need to conduct an interview of the district's current Title IX coordinator to inquire whether the Title IX coordinator received appropriate training.

Notice of Non-discrimination³

While not an allegation identified in the complaint, during the course of OCR's investigation, OCR reviewed the district's notice of non-discrimination because it was provided to OCR as part of the district's data responses. There are three elements of proof to establish the recipient has a notice that is compliant with 34 C.F.R. § 106.9. Such notification shall state at least that the requirement not to discriminate in any education program or activity extends to employment therein,⁴ and that inquiries concerning the application of Title IX to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR's Assistant Secretary. Section 106.9(b) requires each recipient to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which it makes available to the types of persons described in § 106.9(a), or which is otherwise used in connection with the recruitment of students or employees.

OCR identified the district's notice of non-discrimination (notice) as Policy 10006, which was last amended on August 13, 2002. The notice states that no student or employee shall be subject to discrimination because of sex among other protected classifications. The notice does not mention

³ OCR notes that there was no allegation regarding the notice of non-discrimination in the complaint, but the documents provided as part of the recipient's data responses raised a concern regarding its notice of non-discrimination.

⁴ 34 C.F.R. § 106.9(b).

Title IX. The notice then provides specific information about complaints of race discrimination including what to prepare and how to file the complaint. There is no equivalent language in the notice regarding sex discrimination.

OCR has a concern that the notice of non-discrimination does not comply with Title IX requirements because the notice of non-discrimination does not state that questions to the district concerning the application of Title IX must be referred to the Title IX coordinator, and it does not mention Title IX. While OCR has a concern regarding the district's notice of discrimination's failing to comply with Title IX, in order to conclude its investigation, OCR would need to conduct interviews—notably of the Title IX coordinator—to determine whether and how the notice was disseminated to students and employees. Additionally, it would need to make a supplemental data request for all print and online sources in which the notice of non-discrimination appears. In short, OCR would need to determine whether the notice of non-discrimination is disseminated prominently and whether the district has a compliant notice of non-discrimination elsewhere that has not been provided to OCR for its review.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. Before OCR completed its investigation with respect to the allegations, the district expressed an interest in voluntarily resolving this case. In light of the district's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

The actions the district will take under the agreement include: (1) a review of policies and procedures to ensure that any disciplinary action taken against a student athlete is compliance with Title IX and approved by the appropriate school principal; (2) development of a training plan to provide effective training for employees, contractors and all coaches and volunteers in the interscholastic athletics program about the procedures, and the role and responsibilities of the Title IX coordinator; (3) training of the Title IX coordinator as to Title IX and its application to interscholastic sports and extracurricular activities; (4) revision of the district's notice of non-discrimination; and (5) an opportunity for the district to address the impact of its actions or inactions with the complainants.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that the district 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 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 will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by **June 30, 2017**.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Shirley Oliver, Senior Equal Opportunity Specialist, by telephone at (206) 607-1633 or by e-mail at shirley.oliver@ed.gov; or you may contact Tina Sohaili, Attorney, by telephone at (206) 607-1634 or by e-mail at tina.sohaili@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Honorable Sherri Ybarra, superintendent of Public Instruction