



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 22, 2018

Rex Ward
Superintendent
Greenwood County School District 52
605 Johnston Rd.
Ninety Six, SC 29666

Re: OCR Complaint No. 11-16-1371
Letter of Findings

Dear Mr. Ward:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on June 2, 2016 against Greenwood County School District 52 (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleges the School discriminated against female students who participate in athletics during the 2015-2016 school year on the basis of gender and that the District retaliated against the Complainant. Specifically, the complaint alleges the following:

1. The School discriminated against female athletes, particularly in volleyball¹ when compared to male athletes in its:
 - a. coaching, specifically, in the advertising for coaching vacancy and the qualification requirements for the coaches; and
 - b. publicity, specifically, in student athlete public recognition and publicity on Facebook.
2. On July 25, 2016, the District retaliated against you for Title IX related advocacy because the District held a meeting and XXXXX.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title IX.

¹ XXXXX.

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

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District staff. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint, including concerns identified with regard to Allegations 1(a)-(b), pursuant to Section 302 of OCR’s *Case Processing Manual*, and signed and submitted to OCR the enclosed Resolution Agreement on August 16, 2018. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to substantiate Allegation 2. OCR’s findings and conclusions are discussed below.

Allegation 1: The School discriminated against female athletes, particularly in volleyball when compared to male athletes in its:

- a. coaching, specifically, in the advertising for coaching vacancy and the qualification requirements for the coaches; and
- b. publicity, specifically, in student athlete public recognition and publicity on Facebook.

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.41(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a district. The Title IX regulation, at 34 C.F.R. § 106.41(c), states that a district which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes.

In determining whether a district is in compliance with Title IX with respect to athletics, OCR follows “A Policy Interpretation: Title IX and Intercollegiate Athletics” (the Policy Interpretation), which was published at 44 Federal Register No. 239, December 11, 1979; the “Title IX Athletics Investigator’s Manual” (1990) (the Manual) (available at <http://eric.ed.gov/?id=ED400763>), and other applicable policy documents.

OCR examines factors when determining whether the district is in compliance with Title IX with respect to the assignment and compensation of coaches and publicity. For assignment of coaching, OCR examines the following factors: (a) training, experience, and other professional qualifications; and, (b) professional standing. Finally, for publicity, OCR examines the following: (a) availability and quality of sports information personnel; (b) access to other publicity resources for men’s and women’s programs; and, (c) quantity and quality of publications and other promotional devices featuring men’s and women’s programs.²

The Policy Interpretation clarifies that districts must provide equivalent treatment, services, and benefits regarding athletic program components. The overall equivalence standard allows districts to achieve their own program goals within the framework of providing equal athletic opportunities. To determine equivalency for men’s and women’s athletic programs, program

² Specific factors for each element at issue as described in “Title IX and Intercollegiate Athletics,” 44 Federal Register No. 239, December 11, 1979 – available at <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.

components assessed by comparing the following: availability, quality, kind of benefits, kind of opportunities, and kind of treatment.

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the district may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Compliance concerns will exist only if disparities are of a substantial and unjustified nature in a school's overall athletic program; or if disparities in individual program areas are substantial enough in and of themselves to deny equality of athletic opportunity.

Analysis: Allegation 1(a)

The Complainant alleges that the District does not advertise in an equitable way for coaching positions between male and female sports, and that the qualification requirements for coaches are not equitable. She contends that the coaches for female sports teams are less experienced, and specifically she identified the 2016-2017 volleyball coach who was a recent college graduate and was not a District employee³.

The District, via its narrative response, explained that when hiring coaches, it advertises the position on the District's website with a date by which a letter of interest and resume should be submitted. The Athletic Director also posts the job on the South Carolina Coaches Association and/or South Carolina High School League websites. If the District receives no or few applications, the Athletic Director and the Principal will search the South Carolina Educator Employment Application System to identify possible candidates. The District seeks to hire a teacher who is also interested in coaching the sport. If there is no teaching vacancy, the District will hire only a coach, and will seek to hire someone with experience in either coaching or playing the sport. A committee screens the applicants, conducts interviews, and makes recommendation to the Principal and Superintendent, who in turn make recommendations to the Board. The District reports that the qualifications they seek for coaches are the same regardless of sport or whether the coach is for male or female athletes. The District further noted that the District will hire someone with a favorable background check and references. OCR reviewed the District's policy regarding posting and advertising of professional vacancies (though not specific to coaching) as well as a "Coach Position Description.

Before completing our investigation, including interviewing District staff and reviewing additional documentation, the District requested to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

Analysis: Allegation 1(b)

The Complainant alleges that female athletes do not receive the same recognition or publicity as male athletes, specifically that the volleyball team was never promoted on the District's social media pages, while all other sports were promoted.⁴

³ OCR notes that the Complainant also made a similar allegation regarding the School's XXXXX.

⁴ OCR notes that the Complainant also made this allegation regarding XXXXX.

The District, in its narrative response, indicated that the head coach for each sport is responsible for publicizing and promoting his/her sport, including reporting scores to the media, promoting student athletes at school and community events, updating the program's website, posting messages on social media, submitting announcements to read over the PA system, nominating athletes for all-region and all-state awards, supplying statistics to individual sports websites, and assisting in the college recruitment process. The District explained that head coaches are given access to the District's public announcement systems and other materials to assist them in publicizing their sport. The District also reported to OCR the various types of publications and promotional materials it uses, including the School's website, each sport's webpage, social media, the public announcement system, and yearbooks. There is also an events bulletin board, which contains newspaper articles regarding events and profiles of students. In OCR's follow up data request, we requested the materials provided to coaches to assist them in publicizing their sport. As described above, before the District provided those to OCR, it requested to resolve the complaint.

Before completing our investigation, including interviewing District staff and reviewing additional documentation, the District requested to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

Allegation 2: On July 25, 2016, the District retaliated against the Complainant for Title IX-related advocacy because the District held a meeting and XXXXX.

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.71, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Title IX or who files a complaint, testifies, assists, or participates in a proceeding under Title IX. When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the district took an adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the district has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the district's reason for its action is a pretext, or excuse, for unlawful retaliation.

Analysis

XXXXX.

OCR first considered whether the Complainant established a prima facie case of retaliation. Specifically, whether the Complainant engaged in a protected activity, whether the District took an adverse action against her, and whether the protected activity and the adverse action were causally connected. The District does not dispute the Complainant's protected activity, i.e., Title IX related advocacy. The District confirmed to OCR staff that the Complainant engaged in Title

IX advocacy prior to the alleged retaliatory act. Second, the Complainant explained to OCR that XXXXX. Based on the above information, OCR determined that XXXXX, could deter a reasonable person from engaging in further protected activity; therefore, OCR determined that the District engaged in an adverse action. Finally, based upon the temporal proximity of the Complainant’s protected activity, OCR determined there to be some evidence of a causal connection between the Complainant’s protected activity and the District’s adverse action. Therefore, OCR determined that the Complainant established an initial, or prima facie, case of retaliation.

OCR next analyzed whether the District set forth a non-retaliatory reason for XXXXX.

As the District put forth a legitimate non-retaliatory reason for its actions, OCR next analyzed whether the District’s reasons are a pretext or an excuse for unlawful retaliation. OCR interviewed XXXXX.⁵ First, concerning XXXXX.

XXXXX.

XXXXX.

Based on the above, OCR determined there to be insufficient evidence that the District’s non-retaliatory reasons for its actions are a pretext for unlawful retaliation. First, concerning XXXXX. For the above reasons, OCR determined there is insufficient evidence that the District retaliated against the Complainant as alleged.

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Resolution Agreement on August 16, 2018, which, when fully implemented, will resolve Allegations 1 and 2. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the District’s implementation of the Agreement until the District has fulfilled the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR’s investigation of the complaint. This letter 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. 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law

⁵ XXXXX.

enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Zorayda Moreira-Smith (at Zorayda.Moreira-Smith@ed.gov or 202-453-6946) or Shana Heller (at Shana.Heller@ed.gov or 202-453-6599), the OCR attorneys assigned to this complaint.

Sincerely,

Kristi R. Harris
Team Leader, Team IV
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Andrea White, Counsel for the District