



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

May 15, 2017

Leslie K. Tubb
Superintendent
Brunswick County Schools
35 Referendum Drive
Bolivia, North Carolina 28422

RE: OCR Complaint No. 11-17-1085
Resolution Letter

Dear Superintendent Tubb:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXX against Brunswick County Schools (the District). The Complainant filed the complaint on behalf of XXXX (the Student) at XXXX (the School). The Complainant alleges that the District discriminated against female students at the School, including the Student, on the basis of sex. Specifically, the complaint alleges that, on or around XXXX and thereafter, only male students were permitted to help the athletic trainer during football games.

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. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Factual Background

The Student is currently a XXXX grader at the School. During the XXXX school year, XXXX. According to the Trainer, each year she solicits student volunteers (both male and female) to

assist with her duties¹ with respect to the football team. For the XXXX school year, XXXX females served as aides to the Trainer for varsity football games from XXXX until XXXX. Typically there is between one and three student volunteers per game. XXXX 3 SENTENCES REDACTED XXXX.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's education programs or activities on the basis of sex.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals of a different sex. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

Analysis

In this case, the Complainant alleges that, beginning on XXXX, the District discriminated against female students² when it restricted them from serving as aides to the Athletic Trainer. It is not in dispute that, at the request of the XXXX Coach, on XXXX, the Trainer informed the Student that she was not permitted to XXXX. It is also not in dispute that the Student did not serve as the assistant to the Trainer for XXXX. According to the Trainer, a male XXXX assisted her for the XXXX. She added that no student assisted the Trainer for the XXXX game held on XXXX. Based on this information, OCR determined that female students, particularly the Student, were treated less favorably than male students when the Student was not allowed to assist the Trainer XXXX. Accordingly, OCR determined that there is sufficient evidence to establish an initial, or prima facie case of discrimination.

OCR next examined whether the District had a legitimate nondiscriminatory reason for the different treatment. During interviews with OCR staff, the XXXX Coach (the Coach) explained that he received a call from a parent requesting that the Student not XXXX. The Coach explained to OCR that he told the Trainer that he did not want to deal with XXXX and asked her to tell the Student XXXX. OCR inquired about the nature of the XXXX, and in response, the Coach explained that there was tension between XXXX football players because of XXXX. Specifically, the Coach informed OCR that XXXX. The Coach said that this was causing friction between XXXX players XXXX. XXXX 2 SENTENCES REDACTED XXXX. He stated that he did not want anything to distract his players as they prepared for the upcoming game.

¹ During an interview with OCR, the Athletic Trainer explained that during football season, she needs student assistants to distribute water to players while she tends to player injuries. She also clarified that she typically only uses student aides during football games.

² The District has a policy that prohibits discrimination, including different treatment based on sex in its educational and employment programs and activities.

In an interview with OCR, the Trainer confirmed that the XXXX of the Student as an aide was due to a request she received from the Coach because he did not want to deal with XXXX. OCR inquired whether the Trainer was aware of any XXXX between the Student and players on the football team. In response, she stated that she was unaware of any XXXX at the time of the decision, but that about a week later, the Coach told her that there had been a “XXXX” between XXXX players XXXX. She said the Coach told her that the Student did not do anything wrong, but that the Trainer could not supervise the Student at all times and prevent a “XXXX” from happening.

Based on the above, OCR found that the Coach had a legitimate nondiscriminatory justification for telling the Trainer that the Student could not XXXX, while allowing a male student to assist the trainer, i.e. that the Student was a distraction at practice and the cause of friction XXXX between XXXX players right before XXXX, when the team needed to perform at its best.

Finally, OCR considered whether the District’s reasons were a pretext for discrimination. Based on the statements of the Coach and the Trainer, OCR has concerns that the reason proffered by the District regarding the decision to XXXX the Student may be a pretext for sex discrimination. Specifically, the Trainer reported to OCR that the Coach had made comments to her on several occasions over the last XXXX years that he does not like female students being around the football team because he can’t supervise the girls at all hours of the day.³ She said the Coach told her that there are “XXXX.” These comments are consistent with the comment the Coach made to OCR that female volunteer Trainers should not be on the bus with a bunch of male football players without adult supervision because “XXXX.”⁴

In addition, the instances of “XXXX” and distraction cited by the coach involved the behavior of XXXX male football players rather than the behavior of the female Student. This raises concerns about the reason given for the Coach’s decision that XXXX. When OCR asked the Coach how the Student would be a distraction to the players, he stated only that XXXX. This potentially undercuts the Coach’s reason for XXXX. In addition, when OCR asked the Coach whether the XXXX male players were disciplined or any steps were taken to address the conflict between them, the Coach stated that he had not done either. Rather, in an attempt to address the “XXXX,” the Coach took action against the female Student despite the fact that the evidence reviewed to date fails to indicate that she played an active role XXXX. This, along with the comments allegedly made by the Coach to the Trainer with respect to female students being around the football team, creates a concern that the Coach’s decision was based on discriminatory stereotypes of females as “XXXX” troublemakers and of males as not responsible for or able to control their behavior around females. To resolve this concern, the District has agreed to the enclosed Resolution Agreement.

³ The Trainer told OCR that student volunteers, XXXX, are supervised by her at all times. She informs all student who volunteer, male and female, of her expectation that they will report to the training room and enter through the back entrance so as not to walk through the players’ locker room, follow her during the game, not speak to players during the game, and sit with her at the front of the bus to “away” games. The trainer stated that XXXX met all of these expectations.

⁴ Upon further questioning by OCR, the Coach acknowledged that when the team traveled by bus, the female volunteer Trainers are required to sit at the front of the bus with the Trainer at all times.

With regard to the Complainant's broader allegation that the Coach told the Trainer he did not want female students helping XXXX in the future and that he would have the junior varsity football players provide the assistance XXXX needed, OCR finds insufficient evidence of a compliance concern. In an interview with OCR, the Coach denied telling the Trainer that girls would no longer be allowed to be volunteer trainers for the football team, and maintained that it is the Trainer's decision as to who will help her during games. The Trainer told OCR that the Coach did not explicitly tell her that female students could not assist her in the future, but said that she assumed the Coach felt this way because of the previous statements he had made to her about his discomfort with female students being around the football team. Nonetheless, the Athletic Director told OCR that the Trainer reports to him, and not the Coach. Moreover, the Principal, Athletic Director, and Coach all told OCR that it has been, and will continue to be, the Trainer's decision as to which students will assist her at football games. Based on the above, OCR finds insufficient evidence that the Coach told the Trainer that female students will not be permitted to assist the Trainer at football games during future seasons.⁵

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on May 12, 2017, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was 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 is in compliance with the statute and regulation at issue in the case. 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 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.

⁵ OCR notes that the Resolution Agreement contains provisions that, nevertheless, will address the Complainant's class allegation by requiring training on the requirements of Title IX for Athletic Department Staff by, for example: requiring the District to send a memorandum to all School staff reaffirming the District's obligations under Title IX and training relevant staff.

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 Kendra Riley, the OCR attorney assigned to this complaint, at 202-453-5905 or kendra.riley@ed.gov or Samantha Shofar, the other OCR attorney assigned to this complaint, at 202-453-5929 or samantha.shofar@ed.gov.

Sincerely,

/s/

David Hensel
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Richard Greene, Esq.