



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 21, 2019

Dr. Bill Cook
Superintendent
York County District 3
386 E. Black Street
Rock Hill, South Carolina 29730

Re: OCR Complaint No. 11-17-1274
Letter of Findings

Dear Dr. Cook:

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 March 9, 2017 against York County District 3/Rock Hill Schools (the District). The Complainant alleged that the District discriminated against female students, including the Student, on the basis of sex during the 2016-2017 school year, when School staff:

1. Segregated female students from male students, by sex, during recreational outdoor time following lunch or recess, thus limiting opportunities for physical activity for female students; and
2. Threatened female students, including the Student, with in-school suspension for entering a grassy area used by male students during recreational outdoor time following lunch or recess.

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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant and District faculty and staff. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Title IX, which the District agreed to resolve through the enclosed Resolution Agreement. However, OCR found insufficient evidence to support Allegation 2. OCR's findings and conclusions are discussed below.

Allegation 1

The Complainant alleged that the District discriminated against female students, including the Student, on the basis of sex during the 2016-2017 school year. Specifically, the Complainant alleged that School staff, particularly the Assistant Principal, segregated female students from male students, by sex, during recess, by prohibiting female students from entering the grassy area behind the School and instead restricted them to the concrete area behind the School, thus limiting opportunities for physical activity for female students.¹

Facts

During the 2016-2017 school year, the Student, a female student, was enrolled in Grade X at the School. The Assistant Principal referred to by the Complainant was the School's administrator responsible for Grade X students, as well as for a portion Grade X students, during the 2016-2017 school year. Among her duties was monitoring Grade X students during their lunch period.

According to a written statement by the Assistant Principal, dated April 24, 2017, in a telephone call with the Assistant Principal on XXXX, 2017, the Complainant's husband raised the above-stated concerns and inquired about rules during recess. According to the statement, the Assistant Principal explained to him that "the boys are on the [grassy area], they are very aggressive, and because of that I did not want any of my girls to get hurt. I told him I am very protective of my girls." She further stated that he responded that the Student would be fine because she is XXXX and is accustomed to playing with boys, to which she stated that there were several activities that girls and boys could participate in if they wanted.

The Complainant informed OCR that approximately two weeks later, on XXXX, 2017, the Student entered the grassy area where male students were engaged in a XXXX game. Upon entering that area, the Assistant Principal informed the Student that she could not enter that area and allegedly threatened her with an in-school suspension, as discussed in Allegation 2 below.

Thereafter, in an email to the District's Superintendent sent on XXXX, 2017, the Complainant's husband again raised concerns regarding the segregation of male and female students during recess, and he asserted that this was a violation of Title IX. The Superintendent forwarded the email to the Associate Superintendent, who responded to the Complainant's husband by email and explained that the Assistant Principal separated male and female students because they were chasing each other on concrete, risking injury to themselves and others. She further stated that "the boys play in one area and the girls another, with access to the same sports equipment and play space."

The Complainant's husband subsequently requested further clarification in an email sent to the Associate Superintendent on XXXX, 2017, stating that the Assistant Principal had responded to his inquiry differently. In the interim, the Complainant separately emailed the Associate Superintendent that same day, wherein she also requested clarification and asked if girls have

¹ The Complainant informed OCR that it was the School's Assistant Principal who was responsible for segregating students as she alleged, and that when the Assistant Principal was not present, female students could participate in the same activities and in the same areas as male students.

access to the grassy area behind the school, such that she would be able to tell the Student “where she is or is not able to run freely without fear of reprimand.”²

The Principal, in response to this message, wrote a separate email to the Associate Superintendent and Assistant Principal stating that the goal was to keep students safe; that the practice had been used for years; and that if it was problematic, the School would keep the students inside. Finally, in an email that the Assistant Principal sent to the Associate Superintendent and Principal on April 24, 2017, the Assistant Principal reiterated that students could participate in any activity during recess, and then also stated, “The only restriction I have is that the girls are not to participate with the boys on the [grassy area] only. I don’t usually have to remind students of this.”

The Complainant subsequently filed her OCR complaint on March 9, 2017.

The School’s Lunch Practices

In its response to OCR’s request for information, the District explained the School’s lunch procedure, which was in place during the 2016-2017 school year. Specifically, the District stated that students in Grade X were allocated 30 minutes for lunch, which included 15 minutes for eating and 15 minutes of free time outdoors (i.e., recess), weather permitting, between XXXX a.m. daily. District staff stated that students were allowed to participate in a variety of activities, including but not limited to engaging in athletic activity or socializing with other students outdoors. However, students were not allowed to run on the concrete areas due to injuries in the past.

In an interview with OCR, the Assistant Principal explained that female and male students are allowed on the grassy area. She stated when in that area, that the students could play “sharks and minnows,” run up and down, or play football or soccer. The Assistant Principal noted that students self-segregated by sex because of the “aggressive nature” of male students or the “disinterest” of female students. She stated that female students had organized XXXX games for a while; however, they lost the balls they had used or lost interest, and the female XXXX games discontinued. The Assistant Principal stated that her priority is safety and, as such, she does not allow any students to stand around in the middle of a game in the grassy area. In an interview with OCR, the School’s guidance counselor (the Counselor), who often monitored recess alongside the Assistant Principal, corroborated the Assistant Principal’s statements and stated that if the students were not participating in the activity (e.g., XXXX) on the grassy area, then they could not be in that area.

In addition, the Assistant Principal stated that before allowing a female student to participate in some activities with the male students, she would call the female student’s parents. The Assistant Principal said she did not want female students in the grassy area when male students were running because it was an “accident about to happen.”

² The Associate Superintendent forwarded the email to the Principal and Assistant Principal, and then she later called them to ask that they contact the Complainant with a response. Neither the Complainant nor the District provided OCR with any information to indicate that anyone provided a further response to the Complainant on that date.

The Student

With respect to the Student, the District informed OCR that when the Student and another female student (Student A) ran onto the grassy area on XXXX, 2017, they ran towards the male students who were playing XXXX and did not appear to participate in the XXXX game. The Assistant Principal asked the Student to leave the area because the Student did not ask to play XXXX but was instead just standing around. Specifically, the Assistant Principal recalled saying to the Student, “We don’t go down on the [grassy area] while the boys are playing or something like that.” When OCR asked what was meant by this statement, the Assistant Principal clarified that the male students on the area were very “aggressive” and no one could simply stand on the area, so she was concerned that the Student and Student A would get hurt if they were not participating in the game.

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 a recipient’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 recipient treated a student less favorably than similarly situated individuals of a different sex. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Analysis

Although the District asserted that it did not separate students by sex during the outdoor portion of the lunch period, OCR determined that documentation, in the form of email messages from District staff and the Assistant Principal’s statement, substantiated that the District did establish a practice of having separate play areas for male and female students and had different rules for female participation. In her interview with OCR regarding what she stated to the Student with respect to why the Student and Student A could not play on the grassy area, the Assistant Principal recalled stating, “Girls remember, we don’t go down on the [grassy area] while the boys are playing.” In addition, in an email that the Assistant Principal sent to the Associate Superintendent and Principal on April 24, 2017, the Assistant Principal stated that, “The only restriction I have is that the girls are not to participate with the boys on the [grassy area] only. I don’t usually have to remind students of this.” Based on the evidence described above, OCR determined that female students were treated differently from male students based on their sex as a result of the School’s lunch period practices. Additionally, based on evidence obtained, OCR determined that the Student and Student A were treated less favorably than male students, when the Assistant Principal asked them to leave the grassy area behind the School during recess, while permitting male students to remain in the area, on XXXX, 2017.

Next, OCR considered whether the District had a legitimate, nondiscriminatory reason for the different treatment. Again, although the District denied that it maintained a policy or practice of

segregating students based on sex with respect to recess and asserted that male and female students had access to the same play areas and equipment, the District also stated that students sometimes self-segregated on the basis of sex, depending on the activity in which students wished to participate. Moreover, School staff members stated that they did separate students at times due for their safety, including when students were chasing each other and running on concrete or asphalt areas, and when students were standing in the grassy area and not participating in a specific activity, such as XXXX, and when male students were being aggressive during a XXXX game.³

With respect to the incident involving the Student on XXXX, 2017, the District stated that because the Student and Student A did not ask to play XXXX in the grassy area, but instead ran onto the area where they stood without participating, the Assistant Principal asked the Student and Student A to leave the area. As such, the District's legitimate, nondiscriminatory reason for treating the Student and Student A differently in this instance was due to their non-participation in a specific activity, not their sex.

OCR next considered whether the District's offered legitimate, non-discriminatory reasons for treating female students differently were pretext for discrimination. Based on the evidence obtained, OCR determined that the reasons were pretextual. Although the District offered that students self-segregated and had separate male and female soccer games, when female students attempted to play with male students they were removed, and there appeared to be no option for female participation in XXXX when there was not enough interest in a separate game for female students. Evidence also belied self-segregation and instead reflected that the School had a practice of separating students in the grassy area. Additionally, the District offered no evidence indicating there was a safety concern with respect to the grassy area. For example, the District did not provide any data regarding injuries sustained by male or female students in the grassy area. In fact, the anecdotal information provided during interviews with District employees indicated that minor injuries had occurred on the concrete and asphalt areas of the School, an area where female students primarily played, not on the grassy area.

Moreover, the safety concerns the District identified appeared to be based on sex stereotypes and a notion that female students require protection. Specifically, the Assistant Principal wrote in a statement directed to the Associate Superintendent that in her telephone conversation with the Complainant's husband on XXXX, 2017, she told him, "the boys are on the [grassy area], they are very aggressive, and because of that I did not want any of my girls to get hurt. I told him I am very protective of my girls." Further, the Assistant Principal stated that if a female student did want to play some games with male students, the Assistant Principal would first call home to ensure that parents understood the safety risks involved. The Assistant Principal did not state that the same process would be followed for male students.⁴

Thus, in this instance, and based on multiple statements by the Assistant Principal, her concerns about safety, albeit seemingly well-intentioned, were predicated not upon the safety of all students

³ The Assistant Principal indicated that sometimes some female students went into the grassy area to "oogle" at male students rather than to play soccer or participate in the activity. The Counselor also said male students were sometimes reluctant to let female students play.

⁴ The District did not provide any data related to parent communication regarding participation in physical activity on the grassy area to indicate that practice treated male and female students equally.

and/or whether a student is participating in a designated activity in a particular space. Rather, the evidence indicated that the Assistant Principal was concerned about and acted to ensure the safety of female students, *because* of their sex, and based on stereotypes about female students. In addition, in ensuring the safety of female students, the Assistant Principal did not indicate that she sought to address the purported aggressiveness of male students. Rather, the solution was to exclude the female students, and for some activities, obtain permission from their parents. Consequently, OCR determined that the Assistant Principal implemented a practice of restricting and therefore excluding female students from participating in the same activity with male students in the grassy area. Therefore, OCR determined that the District's legitimate non-discriminatory reason is a pretext for discrimination, and OCR has sufficient evidence to support the finding of a violation of Title IX with respect to Allegation 1.⁵

Allegation 2

The Complainant alleged that the District discriminated against female students, including the Student, on the basis of sex during the 2016-2017 school year, when School staff threatened female students, including the Student, with an in-school suspension (ISS) for entering a grassy area used by male students during recess.

Facts

As discussed above, the Complainant stated that on XXXX, 2017, the Student entered the grassy area where male students were engaged in a soccer game. Upon entering the grassy area, the Complainant stated that Assistant Principal informed the Student that she could not enter that area and allegedly threatened her with an ISS. She also stated that this same threat had been made to the entire Grade X female student body during a lunch period.

The Complainant acknowledged to OCR that the Student did not receive an ISS for entering the grassy area, nor was she aware of any students who had actually received an ISS for entering the grassy area during recess. OCR interviewed, and reviewed written statements by the District's Associate Superintendent, Assistant Principal, Principal, and the Counselor. All individuals stated that imposing an ISS or any other suspensions on female students for entering the grassy area was not a School policy, and the School Handbook also did not include such a policy. The Assistant Principal denied that she told the Student and Student A that they would be assigned an ISS.

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 a recipient'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 recipient treated the

⁵ After OCR had completed its investigation, the District informed OCR that the School's practice of segregating or separating students on the basis of sex had ceased. Specifically, the District provided OCR with information indicating that the Associate Superintendent directed School staff to cease the practice in XXXX 2017. Moreover, the Principal and Assistant Principal, who were responsible for the practice are no longer employed by the District.

Student less favorably than similarly situated individuals of a different sex. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Analysis

OCR did not obtain evidence of any suspensions resulting from outdoor recreational time. Further, although the Complainant asserted that the Assistant Principal threatened to assign an ISS to the Student and Student A, OCR could not verify or confirm that the Student was threatened individually with an ISS, or that the female student body was threatened with an ISS during the lunch period or at any other time for entering the grassy area during recreational outdoor time, as the Complainant alleged.

In instances when OCR has conflicting information and is unable to determine whether an event occurred based on a preponderance of the evidence, OCR must conclude it has insufficient evidence to support the finding of a violation. Based on the foregoing, OCR found no evidence to substantiate that the Assistant Principal treated female students, including the Student, less favorably than male students, by threatening to impose or imposing an ISS on them for entering a grassy area used by male students during recess, as the Complainant alleged. As such, OCR has determined that there is insufficient evidence to establish that the District discriminated on the basis of sex, as alleged. Accordingly, OCR will take no further action with respect to Allegation 2.

Conclusion

On August 20, 2019, the District agreed to implement the enclosed Resolution Agreement (the Agreement), which commits the District to take specific steps to address the identified areas of noncompliance, as discussed in Allegation 1. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant when the District enters into and fulfills the terms of a resolution agreement. OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct visits and may request information as necessary to determine whether the District has fulfilled the terms of the Agreement. If the district fails to implement the Agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the Agreement. Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

The Complainant has a right to appeal OCR's determination regarding Allegation 2 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the District. The District has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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.

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 regarding this letter, please contact Amy S. Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

Letisha Morgan-Cosic
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Kathy Long Mahoney, Esq.