



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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Re: OCR Docket #15-15-1320

Dear xx xxxxx:

This letter is to notify you of the disposition of the complaint filed on xxxx xx xxxxx, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Bay Village City School District (the District) alleging that the District discriminated against students on the basis of sex. Specifically, the complaint alleged that the District offered a non-audition choir for which students earned a classroom grade and course credit to female students in the tenth through twelfth grades at its high school, and did not offer a similar choir for male students in the tenth through twelfth grades.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the U.S. Department of Education. As a recipient of such financial assistance, the District is subject to the requirements of Title IX. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the issue of whether the District was improperly providing or otherwise carrying out an education program or activity separately on the basis of sex, or requiring or refusing participation therein by any of its students on the basis of sex, in violation of the Title IX regulation at 34 C.F.R. § 106.34.

To conduct its investigation, OCR reviewed documents the District provided. OCR also interviewed District employees and the Complainant. After a careful review of the information obtained, OCR has determined that the evidence is sufficient to support a finding that the District

failed to comply with Title IX and its implementing regulation in its provision of a single-sex choir. The District submitted the enclosed Resolution Agreement (Agreement) to resolve OCR’s non-compliance findings. The basis for OCR’s decision is discussed below.

### **OCR’s Investigation**

The District had five choir options listed in its high school’s 2015-2016 Course Selection Guide (the course catalogue). All but one of the choir options (Treble & Bass show choir) was a year-long course for one credit hour. These choirs met once a day during a regularly-scheduled class time and included concert requirements. The Treble & Bass show choir met for one semester and was worth a half credit, with a four- to five-concert requirement and a dancing component.

Four of the five choirs were co-educational and required either audition or previous audition and membership in an auditioned choir; the only exception was the Treble Ensemble, which was a non-audition, girls-only choir. The course catalogue stated, in its description of the course, “Sorry, No guys allowed.”

The District also offered a non-auditioned, boys-only choir as an extracurricular activity. This choir, however, was not graded and not for course credit. It was not listed in the course catalogue because it was extracurricular. It met during a resource period (study hall) once, and occasionally twice, a week and performed in concerts with the choirs described above.

The Complainant told OCR that the only available non-audition choir for grades 10-12 at the high school was the Treble Ensemble, but it is for girls only. The Complainant said that District administrators and the choir director had stated that no boys would be permitted to participate in the Treble Ensemble.

OCR staff spoke with the xxxx xxxxx, you, and the high school principal.

The xxxxx xxxxxx acknowledged that the Treble Ensemble was offered only to girls. She stated that girls tend to be more interested in choir, which is why the school has a choir just for girls, noting that the Treble Ensemble has been offered since the 1980s. She said the Treble Ensemble is a “fallback” for many girls who audition and do not make the other choirs. However, she later clarified that it was not just a fallback choir; many girls like singing in a girls-only choir and they join the Treble Ensemble for that reason. She stated that because boys have also expressed an interest in a fallback option they created the men’s choir. Although District administrators were not sure when exactly the men’s choir was created, they stated it has been in place for at least eleven years.

The xxxxxx xxxxxxxx told OCR that boys cannot participate in the Treble Ensemble because there are not enough boys to balance the girls (noting that balance is the basis of choral music) and there is no literature available for that setup. She stated that if boys were permitted to join this choir, even if they sang within a certain vocal range, it would destroy the choir. According to the xxxxxx xxxxxxxx, the single-sex aspect of the choir makes it special; the girls enjoy the single-sex environment and can be more relaxed because of it. She added that high school boys who sang in the higher vocal ranges would likely go through voice changes as the year

progressed or in subsequent years, causing instability in the choir population. She stated that there is something unique and special about a girls-only choir. She also said that the District cannot give course credit for the boys-only choir as it is now configured because it is not a full course, xxxxxx xxxxxxxx xxxxxxxxxx xxxxxxxxxx xxxx xxx xxxxxx. The principal added that scheduling for another choir course would pose additional complications outside of the xxxxxx xxxxxxxx xxxxxxxxxx because of the high school's course scheduling process.

### **Applicable Legal Standards and Analysis**

Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. The Title IX implementing regulation, at 34 C.F.R. § 106.34(a), states that, with certain specified exceptions listed within this section or elsewhere in the regulation, a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex. One of the exceptions listed in this section, at 34 C.F.R. § 106.34(a)(4), provides that for choruses recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

In this instance, the Treble Ensemble choir limits participation to girls only; the District acknowledges this fact and the course catalogue explicitly states that it is for girls only. This is a violation of the prohibition in 34 C.F.R. § 106.34(a) against refusing participation based on sex. The requirements to participate in the Treble Ensemble are not based on vocal range or quality such that it would fall under the permissible exception for choruses in the Title IX regulation at 34 C.F.R. § 106.34(a)(4) described above. The District did not assert that the girls-only choir was a single-sex class permitted by the Title IX regulation at 34 C.F.R. § 106.34(b) and did not express an interest in trying to meet the requirements of the Title IX regulation for single-sex classes with this choir.

### **Resolution and Conclusion**

In summary, OCR finds sufficient evidence to support a finding that in its offering of a girls-only Treble Ensemble, the District discriminates against boys on the basis of sex in violation of Title IX.

In order to resolve the complaint, the District signed the enclosed Agreement on June 20, 2016, which, once implemented, will fully address the violation findings in accordance with the requirements of Title IX. The Agreement requires the District to: 1) revise and submit to OCR for review its plan to ensure that tenth, eleventh, and twelfth-grade male students are provided with an opportunity to participate in a for-credit choir class that is equal to the opportunity provided to girls, but based on criteria that do not constitute a violation of Title IX, such as vocal range or quality; 2) revise and submit to OCR for review its criteria for admission into the Treble Ensemble to clarify that participation is not limited to girls only, but rather, is based on criteria that do not constitute a violation of Title IX, such as vocal range or quality; 3) adopt and implement the OCR-approved revised plan referenced in item 1 and adopt and publish the revised criteria for admission to Treble Ensemble referenced in item 2 on its website, modify its

2017-2018 course catalog accordingly, and notify students at the District’s high school that for the 2016-2017 school year students can participate in the Treble Ensemble regardless of their gender; 4) ensure that any music offerings at the District, including extracurricular programs and course offerings, will be added in a manner consistent with Title IX and its regulatory requirements; and 5) provide training to all District building administrators regarding Title IX and the regulatory requirements for single-sex classes.

This concludes OCR’s investigation of the complaint and 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.

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 harmed individual 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.

A complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates the cooperation of the District during the investigation and resolution of this complaint. For questions about implementation of the Agreement, please contact OCR attorney xxxxxx xxxxxx xxxxxx xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx. The District’s first monitoring report is due by September 27, 2016. If you have any questions about this letter, please contact xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx.

Sincerely,

/s

Xxxxxxxxxx xxxxxxxx

Enclosure