

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

1350 EUCLID AVENUE, SUITE 325 CLEVELAND, OH 44115-1812

April 26, 2023

Via e-mail only to: XXXXX

Daniel J. LoBello, Esq. O'Neill, Wallace & Doyle, P.C. 300 St. Andrews Road, Suite 302 Saginaw, Michigan 48638

Re: OCR Docket No. 15-23-1068

Dear Mr. LoBello:

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance. Persons who seek to enforce their rights under this law are also protected from retaliation. As a recipient of federal financial assistance from the Department of Education, the District is subject to Title IX. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Title IX, or because that individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under Title IX, in violation of the Title IX implementing regulation at 34 C.F.R. § 106.71.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and the District's Superintendent.

Summary of OCR's Investigation

XXXXX – PARAGRAPH DELETED - 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.

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In addition, the Complainant and the Superintendent XXXXX – SENTENCE REMOVED -XXXXX, XXXXX, XXXXX – SENTENCE REMOVED - XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX.

XXXXX – PARAGRAPH REMOVED - XXXXX

On XXXXX XXXXX, XXXXX, the Complainant filed this retaliation complaint against the District with OCR. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX.

Applicable Regulatory Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.71, prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against any

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individual for the purpose of interfering with any right or privilege secured by Title IX or the regulation, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulation.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR's regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces. An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the individual's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. Under some factual circumstances, the promise of a benefit can be just as coercive as the threat of harm.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence. Direct evidence consists of a recipient's written statement, oral statement, or action demonstrating unambiguously that the recipient took the adverse action because the individual engaged in a protected activity or for the purpose of interfering with protected activities. Circumstantial evidence of retaliatory motive can include (but is not limited to): changes to treatment of the individual after protected activity; the proximity in time between protected activity and the adverse action; the recipient's treatment of the individual compared to others; or the recipient's deviation from established policies or practices.

OCR will examine whether the recipient has identified a facially legitimate, non-retaliatory reason for the adverse action. The recipient's facially legitimate, non-retaliatory reason must be clear, reasonably specific, and of such a character to justify the recipient's action. If no such reason can be found, OCR will conclude that the recipient's adverse action was taken in retaliation for the complainant's protected activity.

Analysis and Conclusion

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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. Individuals who file complaints with OCR 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.

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, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report by May 1, 2023. For questions about implementation of the Agreement, please contact Vince Cheverine, who will oversee the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX or by e-mail at XXXXX.

Sincerely,

Nathaniel J. McDonald Supervisory Attorney/Team Leader

Enclosure