



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

August 31, 2020

By U.S. Mail & E-mail

[REDACTED]

Re: OCR Complaint No. 04-20-1409
Letter of Notification

Dear [REDACTED]:

On June 11, 2020, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received your complaint against Shelby County Schools (District). You (Complainant) allege that the District discriminated against your [REDACTED] (the Student), a rising [REDACTED] School (School), on the basis of her sex. Specifically, you allege that the School denied the Student the [REDACTED] for the 2020-2021 school year due to “homophobic bigot[ry]” and because the Student “didn’t date guys” and “likes girls.” You also allege that the head coach of the [REDACTED] discriminated against the Student by selecting someone else [REDACTED] “that isn’t gay.”

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), as amended, 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 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.

Title IX does not mention discrimination on the basis of a student’s sexual orientation. However, the U.S. Supreme Court recently held that discrimination on the basis of an individual’s status as homosexual constitutes sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964. *See Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1741 (2020) (“[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”).

The Department does not enforce Title VII. Indeed, Congress specifically designed Title VII to apply only to workplaces. *Bostock*, 140 S. Ct. at 1737 (“[I]n Title VII, Congress outlawed discrimination in the workplace.”). By contrast, in cases addressing educational environments

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by fostering educational excellence and ensuring equal access.*

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[OCR-000119]

under Title IX, the U.S. Supreme Court has recognized the significant differences between workplaces and schools. It has held that courts “must bear in mind that schools are unlike the adult workplace.” *Davis v. Monroe*, 526 U.S. 629, 651 (1999). In *Bostock* itself, the Court firmly rejected the idea that its holding would sweep across all statutory or regulatory provisions that prohibit sex discrimination. *Bostock*, 140 S. Ct. at 1753 (“[N]one of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today.”). Thus, *Bostock* does not control the Department’s interpretation of Title IX.

However, with respect to complaints that a school’s action or policy excludes a person from participation in, denies a person the benefits of, or subjects a person to discrimination under an education program or activity, on the basis of sex, the *Bostock* opinion guides OCR’s understanding that discriminating against a person based on their homosexuality or identification as transgender generally involves discrimination on the basis of their biological sex.¹

The Department has determined that it possesses jurisdiction over your complaint that the Student was discriminated against on the basis of her biological sex, by reason of her sexual orientation.² Because OCR has determined that it has jurisdiction and that the complaint was timely filed, OCR is opening the complaint for investigation of the issue set forth below. Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from you, the District, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegations in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.html>.

Accordingly, OCR will investigate whether the District discriminated against the Student on the basis of sex in violation of Title IX and its implementing regulation at 34 C.F.R. Part 106.

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.

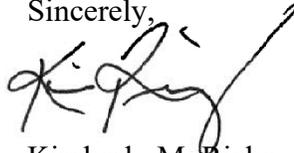
Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of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

¹ By contrast, *Bostock* does not impact OCR’s regulations or enforcement of Title IX regarding schools that separate students by biological sex in the context of intimate facilities—such as locker rooms and bathrooms—or sports teams, athletic opportunities, or other substantive areas for which Title IX includes specific statutory and regulatory exemptions outlining when consideration of biological sex is permitted. Additionally, educational institutions controlled by a religious organization are exempt from Title IX to the extent that the organization’s religious tenets conflict with applications of Title IX. Of course, recipients need not locate a specific exception in Title IX or its implementing regulations in order to establish that their conduct which considers sex does not constitute discrimination under Title IX.

² We note that *Bostock* is based on the express assumption that sex is defined by reference to biological sex. See *Bostock*, 141 S. Ct. at 1739.

If you have any questions, please contact the assigned investigator, [REDACTED], at [REDACTED], or [REDACTED], or me at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly M. Richey". The signature is fluid and cursive, with a long, sweeping flourish extending upwards and to the right.

Kimberly M. Richey
Acting Assistant Secretary for Civil Rights