



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

June 21, 2016

Via US Mail and Facsimile

Mr. Joseph R. Pye
Superintendent
Dorchester County School District Two
102 Green Wave Boulevard
Summerville, South Carolina 29483

Re: OCR Complaint No. 11-15-1348
Letter of Findings

Dear Superintendent Pye:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the above-cited complaint, received on August 31, 2015. The complaint alleged that Dorchester County School District Two (District) discriminated against his daughter, an elementary school transgender student (Student), on the basis of sex by prohibiting her from using the girls' student restrooms at her elementary school and requiring that she use a private restroom in her school's office or nurse's station.

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 education program or activity operated by a recipient of Federal financial assistance from the Department. The District is a recipient of Federal financial assistance from the Department of Education, and is therefore subject to the requirement of Title IX and its implementing regulations.

During the investigation OCR reviewed documents provided by the complainant and the District. Additionally, OCR interviewed the complainant, the School Principal, and the District Assistant Superintendent.

For the reasons set forth below, OCR finds that the District violated Title IX by subjecting the Student to different treatment on the basis of sex.

Legal Standards

Under Title IX, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides, in relevant part, that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, or other education program or activity operated by a recipient which receives Federal financial assistance.

The regulation implementing Title IX, at 34 C.F.R. § 106.31(b), further provides that a recipient may not, on the basis of sex, deny any person such aid, benefit or services; treat an individual differently from another in determining whether the individual satisfies any requirement or condition for the provision of such aid, benefit, or service; provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; subject any person to separate or different rules of behavior; or otherwise limit any person in the enjoyment of any right, privilege or opportunity.

The regulation implementing Title IX, at 34 C.F.R. § 106.33, provides that a recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

The Title IX regulation at 34 C.F.R. § 106.8(a) requires schools to designate at least one employee to coordinate the responsibilities to comply with Title IX. Schools are further required, by the Title IX implementing regulation at 34 C.F.R. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number or e-mail address of the designated coordinator.

The Title IX regulation at 34 C.F.R. § 106.8(b) requires schools to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations.

Statement of Facts

The Student

The Student was enrolled in the XXXX (School) since XXXX. Although the Student’s sex assigned at birth was male, her parents stated that she never exhibited male traits. In the middle of the Student’s XXXX grade year, the Student’s parents contacted the Student’s teacher and indicated that the Student wanted to start wearing dresses to school. The School supported the parents’ request to have the Student wear dresses to School and the School changed the Student’s name in the classroom to her preferred girl’s name. There was a private restroom in the Student’s XXXX grade classroom, which all the students used. In XXXX grade, students began using communal, sex-segregated restrooms located in the School’s hallways. At the beginning of the Student’s XXXX grade school year, the School informed the complainant that the Student must use the private restroom located in the nurse’s office, which was located in a different wing

of the School, or the private restroom that was located in the office of the Assistant Principal, which was at the end of the hallway from where the Student's classroom was situated. XXXX grade students generally would take restroom breaks as a group, on their way to or from lunch or recess, and the Student joined the group with the other female students. However, while the Student's friends used the girls' restroom, the Student was required to leave the group and use the Assistant Principal's private restroom. This embarrassed the Student because she was forced to separate from her friends, who would often request to accompany her to the restroom, and because it required the Student to address questions from her classmates about why she was using a different restroom.

In XXXX, at the end of the Student's XXXX grade year, the Student's parents met with the School principal (Principal) and requested that for XXXX grade (the XXXX school year) the Student be allowed to use the girls' restroom. In addition, the Student's parents asked that the Student's name be changed in PowerSchool¹ because the Student is identified by her former male name on standardized tests and other PowerSchool generated documents.² The Principal informed the Student's parents that the School cannot change her name unless they provide a birth certificate that states the name change. During the meeting, the Principal informed the Student's parents that the Student would be permitted to use the girls' restroom. However, on or about XXXX, the Principal had a meeting with the Student's parents, during which she informed them that the Student would not be permitted to use the girls' restroom and that she would be required to use one of the previously identified private restrooms in the School (i.e., the private restroom that was located in the office of the Assistant Principal or the private restroom located in the nurse's office). The complainant requested clarification from the Assistant Superintendent, who confirmed that the Student would not be granted access to the girls' restroom facilities. On XXXX, the Principal of the School sent a letter to the Student's parents in which she stated the following:

Based on our recent discussion regarding accommodations and modifications of school procedures with respect to your daughter [female name], the school is providing the following accommodations/modifications for [female name] while at school:

1. [Your daughter] will be referred to as [female name];
2. School records will indicate [your daughter] is a female; however, because the school cannot modify state reporting requirements, state records, including PowerSchool, will indicate [your daughter] is a male;
3. [Your daughter] will be subject to any school dress code applicable to females;
4. [Your daughter] will be provided a hall pass to the guidance and/or nurse and be authorized to use private restrooms: . . . Work Room [room formerly used

¹ PowerSchool is an education technology platform that enables school districts to manage school processes and data, including, for example, grading, attendance, and state reporting.

² For example, when the Student was selected for participation in the School's gifted and talented program, the letter that announced her selection referred to the Student by her former male name. Because of this reference, the Student's parents did not show her the letter. In addition, because the Student's ID states her former male name, the School puts a piece of tape over the name and writes the Student's name on it.

for behavior intervention purposes] . . . Health Room [nurse’s office] . . . [Assistant Principal’s] office.

In XXXX, the complainant again requested that the Student’s first name be changed in PowerSchool. The District contacted the State Department of Education, which initially advised the District that they could only use the name on the birth certificate or other legal documentation to change the Student’s name in PowerSchool. The District informed the complainant via email that “if a parent has a legal name change through the courts, then that legal document can be used as the source” to change the name in PowerSchool. In late XXXX, the complainant informed the District that he had petitioned the court for a name change for the Student and was waiting for a court date. The District communicated this information to the State Department of Education and renewed its request for permission to change the Student’s name in PowerSchool. On XXXX, the District e-mailed the complainant stating that it had received permission from the state to change the Student’s name in PowerSchool, “. . . since you have indicated that you are awaiting a court date to make this happen.” The District changed the Student’s name in PowerSchool on XXXX. The Student’s name was legally changed by the court on XXXX.

On XXXX, the District informed OCR that as of XXXX, it permitted the Student to utilize the girls’ restroom.

The District’s policies

The District has identified the Assistant Superintendent of Administration and Personnel as the Title IX coordinator. The appropriate contact information for the Assistant Superintendent is included in the Student Handbook and is available on the District’s website. The District’s statement of nondiscrimination complies with the regulatory requirements of Title IX.

The District’s Title IX grievance procedures, which are codified in District Policy JII, are published on the District’s website and are provided to students and parents/guardians at the beginning of each school year. OCR has determined that the grievance procedures comply with the regulatory requirements of Title IX.

Analysis and Conclusion

The District acknowledged that it denied the Student access to the restrooms designated for girls, and confirmed that it provided her access only to private bathrooms located in the nurse’s station, the assistant principal’s office, and the room formerly used for behavior intervention purposes.

Accordingly, OCR concludes that the District treated the Student differently, on the basis of sex in determining whether she satisfies any requirement or condition for the provision of benefits, or services; by providing her different benefits or benefits in a different manner; and by subjecting her to separate or different rules of behavior, or otherwise limiting her in the enjoyment of rights, privileges or opportunities, in violation of the Title IX regulation, at 34 C.F.R. § 106.31. OCR further determined that there was insufficient evidence to conclude that the District violated the Title IX regulations at 34 C.F.R. §§ 106.8(a) and (b), and 106.9(a).

On June 16, 2016, the District signed the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement voluntarily entered into by the District is designed, when fully implemented, to resolve this complaint and the District's Title IX violation. Pursuant to the Agreement, the District agreed to take the following specific actions:

- Provide the Student with equal access to the girls' restrooms at school;
- Establish a support team, if requested by the Student and her parents, to ensure that she has access and opportunity to participate in all District programs and activities and is otherwise protected from gender-based discrimination at school;
- Revise its policies, procedures, and regulations to ensure that all students, including transgender and gender non-conforming students, are provided with equal access to and an equal opportunity to participate in all education programs and activities offered by the District;
- Provide annual training to all District-level and school-based administrators regarding the District's obligations to prevent and address gender-based discrimination and provide age-appropriate instruction to all students on gender-based discrimination.

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 additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issue raised. As stated in the Agreement entered into by the District on June 16, 2016, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall 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.

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, or participates in an OCR proceeding. 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, OCR 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 Sebastian Amar or Josie Evola, the OCR attorneys assigned to this complaint. You may contact Mr. Amar at 202-453-6023 or by email at Sebastian.Amar@ed.gov or Ms. Evola at 202-453-5908 or by email at Josie.Evola@ed.gov.

Sincerely,

/s/

Alessandro Terenzoni
Supervisory Attorney, Team II
Office for Civil Rights
District of Columbia Office

Encl.: Resolution Agreement

cc: John Reagle, District counsel