



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

October 14, 2014

Dr. John A. Garcia
Superintendent
Downey Unified School District
11627 Brookshire Avenue
Downey, CA 90241

(In reply, please refer to case no. 09-12-1095.)

Dear Superintendent Garcia:

In November 2011, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Downey Unified School District (District). The complaint alleged discrimination based on sex against an elementary school student (Student) in the District. Specifically, the complaint alleged that (1) the Student was subjected to different treatment and harassment by District employees because of her gender identity and gender nonconformance, and (2) the Student was subjected to sexual and gender-based peer harassment and the District failed to provide a prompt and equitable response to notice of the harassment.

OCR investigated this case under its authority under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX), and its implementing regulations, 34 C.F.R. §§ 106.31 *et seq.* Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. The District is a public school district that receives federal funds, and therefore is subject to the requirements of Title IX and the regulations.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the conclusion of the investigation, the District expressed an interest in voluntarily resolving this case and entered into an agreement with OCR (Resolution Agreement) that commits the District to take specific actions. This letter summarizes the applicable legal standards, information obtained during the investigation and how the complaint was resolved.

I. Legal Standards

Pursuant to Title IX, "No 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). Under the Title IX regulations, a school district may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides, 34 C.F.R. §§ 106.31(a)-(b), or subject students to separate or different rules of behavior, sanctions, or other treatment, 34 C.F.R. § 106.31(b)(4). All students, including transgender students and students

who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX.

Harassment of a student on the basis of sex can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Title IX prohibits discrimination resulting from harassment that is sexual in nature and/or gender-based harassment. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping. Thus, harassment of students for failing to conform to stereotypical notions of masculinity and femininity constitutes sex discrimination.

Under Title IX and the regulations, once a school district has notice of possible harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district failed to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action.

When a school district knows or reasonably should know of possible harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the school district must then take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence and, as appropriate, remedy its effects.

Summary of Investigation

The Student is a transgender girl.¹ According to the Complainant, the Student asserted a female gender identity from an early age and was diagnosed with Gender Dysphoria prior to beginning kindergarten in the District. The Complainant first informed District staff of the Student's gender identity during her kindergarten year. During the years between kindergarten and fifth grade, the Student continued to assert a female gender identity but had not made a gender transition to attend school as a girl. For example, although the Student's mannerisms, interests and aspects of her appearance were more typically associated with females, she continued to use her male name and male pronouns, and utilized the boys' restroom.

During the 2011-2012 school year, the Student was enrolled in the fifth grade at a District elementary school. The Complainant stated that throughout the 2011-2012 school year, staff at the school disciplined the Student because of her gender nonconformance and gender identity. For example, the Complainant asserted that elementary school staff confiscated the Student's make-up even though other girls in her class were permitted to wear make-up at school, and staff

¹ A transgender person has a gender identity (one's internal sense of gender) that is different from the gender designation listed on the individual's original birth certificate).

made the Student write an apology letter for making male students uncomfortable by putting on make-up. The Complainant also stated that elementary school staff discouraged the Student from discussing her gender identity with her friends and that the principal discontinued the Student's participation in group counseling sessions with other students based, at least in part, on a concern that the Student might discuss her gender identity.

In addition, the Complainant stated the Student was frequently verbally harassed by her peers. The Student stated to OCR that students on the school bus frequently called her "gay" in a manner intended to be an insult, and "fag", "bitch" and "whore". The Complainant stated that in response to her repeated reports of this harassment to the District's transportation department and elementary school staff, the elementary school principal directed the Student to sit at the front of the bus near the driver. However, other students continued to harass her as she got on and off the bus. The Complainant also stated that elementary school administrators suggested that the Student transfer to another school where no one knew she was a transgender girl.

The Complainant informed OCR that the Student fully transitioned to attending school as a girl during the second half of the 2011-2012 school year, including wearing girl's clothing and requesting that elementary school staff address and refer to her with her chosen female name and female pronouns. The Complainant stated she felt some elementary school staff were uncomfortable with the Student's gender identity and did not support her gender transition. For example, the Complainant stated that, after the Student arrived at the Elementary School in a girl's pink shirt and sneakers, the Principal complained that the Complainant should have "forewarned" her that the Student would attend school in girls' clothing. The Complainant also stated that some elementary school staff asserted that the California Education Code required them to call the Student by the male name. The Complainant asserted that after the Student's gender transition, school pictures reflected the Student's male name, despite the fact that the Student was wearing a dress and the Complainant used the Student's female name on the associated picture forms.

The Student was initially assigned to the middle school into which the elementary school feeds. The Complainant stated that based on the peer harassment the Student experienced at the elementary school, she requested assignment of the Student to a different District middle school. The District granted the request and the Student enrolled in sixth grade at the selected middle school in the fall of 2012. Prior to the Student's first day at the middle school, the Complainant met with a middle school administrator and discussed the Student's gender transition and her experiences at the elementary school. The Complainant stated that she requested that the Student be called by her female name and that she be given the option of using the girl's restroom and locker room or the staff restroom. The Complainant stated that the middle school administrator was receptive to her concerns and responded to her requests. The Complainant stated that middle school staff were informed about the Student's gender identity and consistently used the Student's female name and female pronouns, which helped the Student feel more accepted and supported at school. The Complainant stated the Student also used the middle school's girl's restroom and locker room without incident.

According to the Complainant, the Student continued to experience peer harassment at the middle school. For example, the Complainant stated that students at the middle school who

knew about the Student's transgender status would shout her former male name as she walked by in the hall or walked into class. The Student informed OCR that she had been "outed" as transgender by students who brought in elementary school pictures, and that so many students asked her about her gender identity that she felt she had no choice but to disclose her transgender status. The Student also stated that students also frequently harassed her with questions about her anatomy and sexuality that made her feel uncomfortable. The Complainant stated that middle school staff disciplined students when they harassed the Student, but that she repeatedly requested that the middle school hold a school-wide assembly aimed at curbing gender-based harassment and bullying from peers, but the school did not convene one.

In August 2013, as a result of a change in state law, the Complainant obtained an identification document for the Student reflecting the Student's female name and gender. In August 2014, the District informed OCR that the Board of Education approved Board Policy and Administrative Regulation 252, "Transgender Students, Privacy, and Facilities" to implement California Assembly Bill (AB) 1266.²

The Complainant stated to OCR that she remains concerned about the impact of peer harassment on the Student in middle school and about how the Student will be treated when she is in high school. She also expressed that she wants the Student to be treated the same as other female students in all programs and activities that are offered at her middle school and at the District's high schools, including extracurricular programs and activities as well as opportunities to participate in athletics. The District middle schools and high schools offer numerous extracurricular activities as well as opportunities to participate in athletics. Accordingly, in addition to ensuring that the Student is able to participate fully in the District's academic and other programs that are offered during the school day, the Student must be able to participate in any of the extracurricular activities and athletics opportunities that are available at her middle school and at the District high school that she will attend.

II. Resolution Agreement

OCR shared the Complainant's concerns with the District, including her concern about the impact of peer harassment on the Student and how the Student will be treated when she is in high school. The District, without admitting any violation of federal law, voluntarily agreed to enter into the attached Resolution Agreement with OCR to resolve the complaint. The Resolution Agreement memorializes the Student's use of female-designated facilities at District schools, and the District's agreement to otherwise treat the Student as a girl in all respects. The District has also agreed to take other actions to ensure that the District continues to treat all students, including the Student and other transgender students, in a nondiscriminatory manner, including by amending its policies and procedures, training staff, providing age-appropriate instruction to students, surveying parents and students about harassment, and ensuring appropriate supports for the Student and other transgender students who request it.

² AB 1266 is a California state law adopted in August 2013, which requires pupils be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.

III. Conclusion

OCR has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, OCR is closing this complaint as of the date of this letter. OCR will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the District does not comply with the Resolution Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank the District for its cooperation during this investigation. In particular, OCR wishes to thank the District's counsel, Nancy Mahan-Lamb, for her cooperation, understanding and responsiveness during this complaint resolution process. If you have any questions regarding this letter, please contact OCR attorneys Gloria Guinto at (415) 486-5519 or Kendra Fox-Davis at (415) 486-5418.

Sincerely,

/s/

Arthur Zeidman
Regional Director

Enclosure