

July 21, 2023

Jeffrey Turnbull
United States Department of Education
Office for Civil Rights
Via email: Jeffrey.Turnbull@ed.gov

Re: OCR Docket #05-23-1324

Dear Mr. Turnbull:

As you know, we represent Penn-Harris-Madison School Corporation (“PHM” or the “School”) with respect to the above-referenced matter. PHM submits this narrative response to the requests for information and documents included in your June 2, 2023 letter.¹

I. INTRODUCTION

PHM is committed to providing equal educational opportunities and educating its students in a safe, nondiscriminatory, harassment-free learning environment. The Complaint, which was submitted to the Office for Civil Rights on March 22, 2023, alleges that PHM discriminated against male students on the basis of sex and white students on the basis of race when it publicized an April 2023 “One-DAY STEM Conference for Girls” (the “Conference”), which allegedly excluded male participants and which offered scholarships only to non-white students. As discussed further below, PHM has absolutely no affiliation with the Conference and its only assistance to it has been incidental and consistent with its treatment of other third-party providers of educational programming opportunities. Accordingly, PHM denies it has violated Title IX or Title VI by providing impermissible “significant assistance” to the Conference and requests the Complaint be dismissed.

II. FACTUAL BACKGROUND

A. Penn-Harris-Madison School Corporation

¹ Please note that the information in this narrative response, and all supporting documents, is based upon facts presently known from PHM’s initial investigation and may be supplemented in the event PHM becomes aware of new or additional facts. Furthermore, this narrative, while believed to be true and accurate, does not constitute an affidavit and is not intended to be used as evidence in any administrative or court proceeding. By submitting this narrative to assist the OCR in its investigation and resolution of this matter, PHM in no way waives its right to present new or additional information at a later date for substance or clarification. Moreover, by responding to this Complaint, PHM does not waive, and hereby preserves, any and all substantive and procedural defenses that may exist to the Complaint and the Complainant’s allegations.

PHM is the public educational institution responsible for educating children who live in Penn, Harris and Madison Townships in St. Joseph County, Indiana, near South Bend. PHM serves approximately 11,650 students in eleven elementary schools, three middle schools and one high school. Dr. Jerry Thacker serves as PHM's Superintendent. Additional information regarding PHM is available [here](#).

B. The Conference

The Conference is not a PHM program. PHM does not coordinate or operate the Conference, provide financial assistance, provide staff or administrative support, identify students for the Conference, or allow the Conference to use its facilities. Rather, it is sponsored and organized by [Expanding Your Horizons](#) in partnership with [Techbridge Girls](#), neither of which contracts or is otherwise affiliated with PHM. PHM understands, based on a review of the Conference's promotional materials, that it aims to encourage middle school girls, including cis, trans, and gender-nonconforming youth, to study STEM subjects, provide them with positive STEM role models, and motivate them to pursue careers in STEM professions. PHM does not know whether the Conference excludes any applicants based on sex, race, or any other criteria.

The Conference did not use any PHM materials, supplies or equipment. PHM staff were not encouraged to assist with the program, and if any PHM staff became involved with the Conference, they did so on their own and not as agents of PHM.² PHM's only involvement was to link the Conference flyer in parent electronic newsletters sent by the three middle schools in March 2023. See the newsletters in **Exhibit A**. The decision to advertise the Conference in the newsletters was consistent with PHM's regular practice of notifying families of local educational opportunities. See, e.g., [PHM's Community Events and Activities](#).

PHM does not have any information on how many PHM students may have participated or on the conference attendees in general. Discovery Middle School did note that if a student was interested and the registration fee was a hindrance, the family could reach out to the principal. However, no students utilized this offer of assistance. Beyond this offer, PHM has no knowledge regarding any scholarships for the Conference.

III. DISCUSSION

PHM has not run afoul of Title IX's prohibition on providing "significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees." 34 C.F.R. §106.31. Nor has PHM run afoul of Title VI's prohibition on discriminatory actions by a third party "through contractual or other arrangements." 34 C.F.R. §100.3(b).

PHM's assistance to the Conference has been incidental at best. PHM has no contractual relationship with the Conference's organizers. PHM has provided no financial assistance to the

² To the best of PHM's knowledge, no PHM employees were involved with the Conference.

Conference or its attendees. PHM has not provided staffing, administrative support, equipment, materials, or facilities. PHM has not assisted the Conference in identifying student participants. PHM did provide limited advertising but the advertising was consistent with that provided for other similar programming.

Simply put, these actions do not create the connection necessary to render PHM responsible for discriminatory actions, if any, of the Conference. *See* 40 Fed. Reg. at 24132 (noting that “if the recipient furnishes the ‘outside’ agency or organization with ‘significant assistance,’ the ‘outside’ agency or organization becomes so connected with the education program or activity of the recipient that any discriminatory policies or practices for which it is responsible become attributable to the recipient”). Although the guidance is now archived, the *January 14, 2021 Questions and Answers Regarding OCR’s Interpretation of Title IX and Single Sex Scholarships, Clubs, and other Programs* squarely states:

[s]imply advertising (by listing on the school’s website or otherwise) the availability of an academic, extracurricular, or other program offered by a third party that provides no financial support for the school’s students is unlikely to violate Title IX.

Question 12, at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-single-sex-20210114.pdf>.

Because the Conference is not affiliated with PHM either directly or through contractual or other arrangement, and because PHM’s involvement is incidental, PHM cannot be found to have discriminated on the basis of sex or race or otherwise violated Title IX or Title VI in any way.

IV. CONCLUSION

For these reasons, there is no evidence that PHM violated Title IX or Title VI by providing impermissible assistance to the Conference. Accordingly, PHM respectfully urges the OCR to dismiss the Complaint.

Should you require any additional information, please contact us.

Thank you for your consideration.

Sincerely,

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(b)(6); (b)(7)(A)

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