



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
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July 2, 2012

Dr. Terry B. Grier
Superintendent
Houston Independent School District
4400 West 18th Street
Houston, TX 77092-8501

Re: Houston Independent School District
OCR Case Number: 06-11-1061

Dear Dr. Grier:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on November 10, 2010, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Houston Independent School District (the District). The complaint alleged that the District discriminates against female students on the basis of sex. Specifically, the complaint alleged that the District subjects high school girls to discrimination on the basis of sex because the selection of interscholastic sports at the District's high schools does not effectively accommodate the interests and abilities of members of both sexes to the extent necessary to provide equal athletic opportunity.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX; accordingly, OCR had jurisdiction to investigate this complaint.

Legal Standards

The provision of equal opportunities with respect to the opportunity to participate in interscholastic athletics is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The implementing regulation states that in determining whether equal opportunities are provided for boys and girls, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity.

In assessing whether the interests and abilities of the members of both sexes are being effectively accommodated to the extent necessary to provide equal opportunity to participate in interscholastic athletics, OCR uses the three-part test first established in the Department's "Intercollegiate Athletics Policy Interpretation," issued December 11, 1979, and found at 44 *Fed. Reg.* 71413 *et seq.* (Policy Interpretation). The provisions of the Policy Interpretation are generally applicable to interscholastic athletics. OCR also refers to other policy guidance that was issued in 1996 and 2010 and that specifically discusses the

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

application of the three-part test.¹ Each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. An institution is in compliance if it has met any one of the following three parts of the test: (1) the athletic participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or (2) there is a showing by the institution of a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex; or (3) it is demonstrated that the interests and abilities of the underrepresented sex are fully and effectively accommodated by the present program. 44 *Fed. Reg.* at 71416.

Facts

There are 33 high schools located in the Houston Independent School District, 26 of which offer athletic programs. Total student enrollment in the District in 2010-11 was 41,046 students, with 21,075 male students (51%) and 19,971 female students (49%). In the 2010-11 school year, there were 10,104 total participants in the interscholastic athletics programs at the District’s high schools, with 6,365 male participants (63%) and 3,739 female participants (37%).

Information provided by the District revealed that girls were underrepresented in the interscholastic athletics program at 25 of the 26 District high schools that offered athletics during the 2010-2011 school year, with the disparities between their enrollment and interscholastic athletic participation rates at those 25 schools ranging from a low of 3 percentage points to a high of 23 percentage points. District wide, the disparity between the enrollment rate of girls and their interscholastic athletic participation rate in 2010-2011 was 12 percentage points, representing a total of 1,152 additional participation opportunities needed for female athletes.

Male and Female Enrollment and Athletic Participation Rates by Sex for 2010-11 School Year

School	Male Students (Percent)	Female Students (Percent)	Total Students	Male Participants (Percent)	Female Participants (Percent)	Total Participants	Percent Disparity/ Additional Opportunities Needed to Gain Proportionality
Austin	54%	46%	1864	62%	38%	526	8% 44 Opportunities
Bellaire	50%	50%	3466	62%	38%	781	12% 96 Opportunities
Carnegie Vanguard	47%	53%	458	45%	55%	33	+2%
Challenge	47%	53%	444	53%	47%	43	6% 3 Opportunities
Chavez	52%	48%	2757	72%	28%	605	20% 121 Opportunities
Davis	50%	50%	1674	68%	32%	462	18% 84 Opportunities
DeBakey	42%	58%	865	44%	56%	34	2% 1 Opportunity
Furr	54%	46%	805	59%	41%	246	5% 13 Opportunities

¹<http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>;
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.html>

School	Male Students (Percent)	Female Students (Percent)	Total Students	Male Participants (Percent)	Female Participants (Percent)	Total Participants	Percent Disparity/ Additional Opportunities Needed to Gain Proportionality
Jones	55%	45%	590	74%	26%	258	19% 48 Opportunities
Kashmere	55%	45%	600	61%	39%	317	6% 20 Opportunities
Lamar	48%	52%	3268	59%	41%	1041	11% 110 Opportunities
Lee	57%	43%	1691	65%	35%	212	8% 17 Opportunities
Madison	52%	48%	2213	71%	29%	454	19% 88 Opportunities
Milby	52%	48%	2190	61%	39%	534	9% 50 Opportunities
Reagan	54%	46%	2001	58%	42%	512	4% 19 Opportunities
Sam Houston	52%	48%	1874	60%	40%	284	8% 23 Opportunities
Scarborough	54%	46%	753	57%	43%	422	3% 13 Opportunities
Sharpstown	55%	45%	1275	65%	35%	283	10% 28 Opportunities
Sterling	48%*	52%*	1090	70%	30%	158	22% 35 Opportunities
Waltrip	52%	48%	1762	55%	45%	402	3% 12 Opportunities
Washington	57%	43%	907	66%	34%	253	9% 24 Opportunities
Westbury	52%	48%	2160	63%	37%	423	11% 45 Opportunities
Westside	49%	51%	3143	64%	36%	923	15% 135 Opportunities
Wheatley	51%*	49%*	1080	68%	32%	164	17% 28 Opportunities
Worthing	48%	52%	935	70%	30%	250	22% 54 Opportunities
Yates	51%	49%	1181	60%	40%	484	9% 41 Opportunities
Total	51%	49%	41046	63%	37%	10104	12% 1152 Opportunities

Most District high schools did not provide comprehensive historical participation data prior to the 2009-2010 school year, and the district informed OCR that it does not have a plan of program expansion. Also, the District indicated that it has not assessed the athletic interests and abilities of its female students. The Texas athletic association, the University Interscholastic League (UIL), sanctions the following sports: baseball, basketball, cross country, football, golf, soccer, softball, swimming and diving, team tennis, tennis, track and field, volleyball, wrestling. However, only 6 District high schools indicated that they provided all sports sanctioned by the UIL.

Prior to the conclusion of OCR’s investigation and before OCR made a finding regarding whether the District was in compliance with Title IX, the District requested to resolve the complaint. Subsequent

discussions with District officials resulted in the District signing the enclosed voluntary Agreement which, when fully implemented, will resolve the complaint. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation and are consistent with the applicable regulations.

The District has chosen to come into compliance with the applicable Title IX regulation by taking specific steps to demonstrate that the interests and abilities of female athletes are fully and effectively accommodated by its interscholastic athletics high school programs. Under the terms of the Agreement, the District will conduct a comprehensive assessment by October 1, 2012, to determine whether female students have unmet athletics interests. The assessment will include a survey of all high school and eighth grade female students. By November 16, 2012, the District is required to report to OCR on its assessment. OCR will notify the District of any deficiencies with respect to the District's implementation of the Agreement's requirements relating to the assessment, and work with the District to address these deficiencies. The District is also required to report to OCR by November 16, 2012, if it concludes, through its assessment, that it is fully and effectively accommodating the athletic interests of its female high school students at each high school. Otherwise, the District will be obligated to offer additional athletic opportunities to female students. These steps are to be taken by the next competitive season for the particular sport, if possible, during the 2012-13 school year. Additional opportunities may include creating new sports teams for girls, adding levels to existing teams or increasing the squad size of existing teams. For any sport that is not currently offered by a District high school where there is a sufficient number of female students who have sufficient interest and, if applicable, ability in that sport, but where the District determines that there is not sufficient competition within that high school's normal competitive region, the District will take ongoing steps to develop students' interest and ability. These steps may include establishing club sports, exploring the feasibility of establishing competition in the District's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available. The District will also develop, implement and publicize a procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at the District's high schools. The District will provide notice each year to students, coaches, and other District staff of all of the sports offered at each high school.

OCR will monitor the District's implementation of the Agreement. If the District fails to implement the Agreement, we may initiate administrative enforcement or judicial proceedings 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 to enforce the Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

If you or your staff members have any questions regarding this matter, please do not hesitate to contact Brandon Carey, the attorney who is handling this case, at (214) 661-9683.

Sincerely,

/s/

Taylor D. August
Regional Director
Dallas Office

Enclosure