



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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June 6, 2012

Dr. Cindy Rudrud
Superintendent
Deer Valley Unified School District
20402 N. 15th Avenue
Phoenix, Arizona 85027

Re: Deer Valley Unified School District
OCR Case Number: 08-11-1030

Dear Dr. Rudrud:

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 Deer Valley 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 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

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

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 five high schools located in the Deer Valley School District: Barry Goldwater, Boulder Creek, Deer Valley, Mountain Ridge and Sandra Day O'Connor. Total student enrollment in the District in 2010-11 was 10,887 students, with 5448 male students (50.04%) and 5439 female students (49.96%). All high schools in the District currently offer all the interscholastic athletics teams that are sanctioned by the Arizona Interscholastic Association (AIA), the state and local athletic association. The girls' athletic program was established as the various high schools opened in 1980, 1986, 1995, 2002, and 2004. In the 2010-11 school year, there were 3804 total participants in the interscholastic programs at the District's high schools, with 2446 male participants (64.3%) and 1358 female participants (35.7%).

The District offers the following eleven sports for boys at each district high school: baseball, basketball, cross country, football, golf, soccer, swimming, tennis, track, volleyball and wrestling. The District offers the following ten sports for girls at each district high school: badminton, basketball, cross country, golf, soccer, softball, swimming, tennis, track and volleyball.

Information provided by the District revealed that girls were underrepresented in the interscholastic athletics program at each District high school during the 2010-2011 school year, with the disparities between their enrollment and interscholastic athletic participation rates at the five high schools ranging from a low of 10 percentage points to a high of 16 percentage points. Districtwide, the disparity between the enrollment rate of girls and their interscholastic athletic participation rate in 2010-2011 was 14 percentage points, representing a total of 1,080 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/ Needed Additional Participation Opportunities for Females
Barry Goldwater	966 (49.9%)	972 (50.1%)	1938	344 (59.5%)	234 (40.5%)	578	10% 112 Opportunities
Boulder Creek	1190 (51%)	1142 (49%)	2332	584 (67%)	286 (33%)	870	16% 274 Opportunities
Deer Valley	990 (49.8%)	996 (50.2%)	1986	504 (65%)	269 (35%)	773	15% 238 Opportunities
Mountain Ridge	1186 (49%)	1213 (51%)	2399	507 (64%)	289 (36%)	796	15% 230 Opportunities
Sandra Day O'Connor	1116 (50%)	1116 (50%)	2232	507 (64%)	281 (36%)	788	14% 226 Opportunities

School	Male Students/ Percent	Female Students/ Percent	Total Students	Male Participants/ Percent	Female Participants/ Percent	Total Participants	Percent Disparity/ Needed Additional Participation Opportunities for Females
District Total	5448 (50.04%)	5439 (49.96%)	10887	2446 (64.3%)	1358 (35.7%)	3804	14% 1,080 Total Opportunities

The District does not have a policy or procedure for students or parents to request additional sports or levels of sports. It also has not conducted athletic interest assessments of students. During our investigation, the District voluntarily added girls' badminton teams at all five high schools beginning the 2011-12 school year. The District reported that it intends to increase the number of female students participating in badminton, possibly by adding developmental squads and lower level teams. The District does not have any record of requests for additional sports or levels of sports.

Information obtained by OCR suggests that there may be interest among female students at the District's high schools in the interscholastic sport of lacrosse. The District reportedly considered adding lacrosse teams but asserted that the interest was insufficient and there were no opportunities for competition. Because the AIA does not sponsor lacrosse, it is unlikely that formal interscholastic competition will be available. However, OCR found at least a dozen girls' lacrosse club teams at private schools and other high schools in the Phoenix area that could provide competition for District-sponsored teams. As discussed below, the Agreement specifically provides for the District to conduct a comprehensive assessment of the athletic interests of female students and, depending on the results of that assessment, decide whether and how to provide additional interscholastic opportunities for female students.

Prior to the conclusion of OCR's investigation, the District requested to resolve the complaint. Subsequent discussions with District officials resulted in the District signing the enclosed 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 June 30, 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 July 2, 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 requirements relating to the assessment and work with the District to address these deficiencies. The District is also required to report to OCR by July 2, 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.

We appreciate the District's cooperation in providing its first monitoring report received on May 1, 2012. We will provide a written response to the District's report after we have completed our review.

If you or your staff members have any questions regarding this matter, please do not hesitate to contact Rachel Phillips-Cox, the Equal Opportunity Specialist who is handling this case, at (303) 844-4559.

Sincerely,

/s/

J. Aaron Romine
Director

Enclosure

cc: Honorable John Huppenthal
Superintendent of Public Instruction