

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

To resolve the concerns identified under title IX of the Education Amendments of 1972 by the U.S. Department of Education, Office for Civil Rights (OCR), in its compliance review (OCR Reference no. 10095002), Idaho Falls School District (District) agrees to the following:

### **II. GENERAL PROVISIONS**

- A. This agreement resolves only the compliance concern identified by OCR in the above-referenced compliance review and does not constitute an admission by district of any violation of Title IX or any other law.
- B. In the event that the district fails to fully implement this agreement, OCR will take appropriate measures within its authority to effect compliance with Title IX of the Education Amendments of 1972 and 34 C.F.R. Part 106 with respect to this compliance review, including initiating enforcement proceedings.
- C. OCR will monitor the district's implementation of this agreement and will close OCR Reference No. 10095002 after OCR determines that the district has provided sufficient information to demonstrate that it has equally effectively accommodated the athletic interests and abilities of members of both sexes consistent with the requirements of Title IX at 34 CFR 106.41(c) and applicable OCR policy.

### **III. REMEDIES**

- A. The District agrees to provide participation opportunities in interscholastic athletics for female and male students in the District that equally effectively accommodate the athletic interests and abilities of members of both sexes consistent with the requirements of Title IX at 34 CFR 106.41(c) and applicable OCR policy, by:
  - 1. Providing interscholastic athletic participation opportunities for female and male students in numbers that are substantially proportionate to their respective enrollments ("Prong 1"); or
  - 2. Showing a history and continuing practice of interscholastic athletic program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex ("Prong 2"); or
  - 3. Demonstrating that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the district's athletics program.

B. Evaluation

1. Substantial Proportionality. By August 15, 2010, the district will complete a preliminary evaluation of its interscholastic athletic program for the purpose of determining whether it is providing interscholastic athletic participation opportunities for female and male students in numbers that are substantially proportionate to their respective enrollments. In conducting the preliminary evaluation, the District will collect and analyze the student athletic participation and enrollment data for members of each sex. Participation data will reflect the total number of participants listed on the rosters for each sport on the date of the first competition for that sport.
  - a. As used in this agreement, enrollment rates will be calculated using those enrollment numbers, by gender, that the district reports to the Idaho State Department of Education.
  - b. As used in this agreement, the participation rate of female students will reflect the total number of girls listed on the rosters for each sport on the date of the first competition for that sport and does not include participants in activities that are determined by OCR to not constitute competitive athletic activities.
2. Determine accommodation of interests and abilities. If the preliminary evaluation required by section III.B.1 of this agreement indicates the district is not providing interscholastic athletic participation opportunities for both sexes that are substantially proportionate to their high school enrollment, the district will complete an evaluation of its interscholastic athletics program to accurately determine whether it is fully and effectively accommodating the athletic interests and abilities of the underrepresented sex as required by Title IX at 34 CFR 106.41(c) and all applicable OCR policy interpretation and guidance, including OCR's April 20, 2010 "Dear Colleague" letter. The district's evaluation shall be based on non-discriminatory methods of assessment and will take into account multiple indicators of interest and multiple indicators of ability and will be designed to reasonably reflect the current level of athletic interests and abilities of students. By October 1, 2010, the District will submit a draft of its evaluation procedures to OCR for review and comment prior to conducting its evaluation. OCR will promptly review and provide comments on the draft. OCR will also be available to provide technical assistance regarding applicable OCR policy interpretation and guidance, including OCR's April 20, 2010 "Dear Colleague" letter, and to provide feedback as the District is conducting its evaluation of its athletic program. The district will complete its evaluation by November 1, 2010. The evaluation shall take into account a broad range of indicators, such as:
  - a. Reviews and identification of sports, squads, and levels of sports that are not currently offered by the district that are offered by schools that compete

within the league in which the district competes and schools that are within the district's normal competitive region;

- b. Determinations of the rates of participation by members of the underrepresented sex in sports that are offered in elementary and middle schools, community sports leagues or clubs in the geographic areas from which the district draws its enrollment or in club or intramural sports at the district's schools;
- c. Reviews of the number of students who are members of the underrepresented sex that are cut from each team, and the reasons they were cut, to assess whether any of the students who were cut have the ability to compete in that sport;
- d. Requests by or on behalf of members of the underrepresented sex students that have been received by the district within the previous two school years to add a particular sport, squad, or level of sport, or to elevate an existing club or intramural sport to interscholastic sport status;
- e. Surveys or questionnaires of students or other information (e.g., student interviews, sport-specific interest meetings, etc.) collected from students using non-discriminatory methods that are designed to fully and accurately assess unmet athletic interests and abilities among members of the underrepresented sex in interscholastic sports;
- f. Assessments or other information reflecting the ability of students who are members of the underrepresented sex to compete in a particular sport, prior participation in that sport or a similar sport at the middle or high school level or intramural or club level, general athletic ability, participation in other high school interscholastic sports, the nature of the particular sport, and other relevant factors; and
- g. Consideration of any other available information that reflects the athletic interests and abilities of the district's high school students who are members of the underrepresented sex, including, but not limited to, interviews with students, coaches, administrators, and others.

#### C. Corrective Action and Implementation Steps

By **February 15, 2011**, if the information collected under sections III.B of this agreement indicates that the district is not providing participation opportunities for high school students in numbers substantially proportionate to their enrollment and that it is not fully and

effectively accommodating the athletic interests and abilities of high school students who are members of the underrepresented sex, the district will take the following steps:

1. Sports Currently Offered.

- a. For sports that are currently offered as interscholastic sports, identify each sport in which there is sufficient interest and ability, a sufficient number of members of the underrepresented sex to support the creation of an additional squad or squads, and sufficient competition within the district's normal competitive region, to support the addition of a squad or squads in those sports to the district's interscholastic athletics program;
- b. For each sport currently offered that meets the criteria in section III.C.1.a. of this agreement, the district will add a squad or squads in that sport by the next competitive season;
- c. For each sport currently offered where the district determines that there is not a sufficient number of girls to support the creation of an additional squad, or that there is not sufficient competition within the district's normal competitive region to support the addition of a squad in that sport, and where there are no state activities association or other league or local requirements that would limit the ability to expand the size of the squad, the district will institute a squad size policy that increases competitive participation opportunities for high school students who are members of the underrepresented sex who have the ability to compete in the sport.

2. Sports Not Currently Offered.

- a. For each sport that is not currently offered by the district, and in which there is sufficient interest and ability and a sufficient number of members of the underrepresented sex identified to support the creation of an interscholastic team in that sport, the district will determine whether there is sufficient competition within the league in which the district competes or within the district's normal competitive region, to provide competition opportunities for that sport;
  - b. For each sport that is identified that meets the criteria outlined in section III.C.2.a. of this agreement, the district will initiate that sport during the ensuing school year.
3. Development of Intramural or Club Sports. For any sport that is not currently offered by the district in which there is sufficient interest and ability and a sufficient number of members of the underrepresented sex identified to support the creation of an interscholastic team in that sport, but where the district determines that there is not

sufficient competition within the district's normal competitive region, the district will take action to provide competition opportunities for that sport by establishing and supporting a club team or intramural competition, in order to support the development of that sport for members of the underrepresented sex as an interscholastic sport.

4. Completion time frame. The district agrees that it will complete the actions necessary to fully comply with its obligations to provide participation opportunities in interscholastic athletics for female and male students in the District that equally effectively accommodate the athletic interests and abilities of members of both sexes no later than **June 10, 2012.**

#### **IV. INFORMATION SHARING WITH OCR**

The district agrees to cooperate with OCR by providing information that will permit OCR to monitor the district's implementation of its commitments made in this agreement. OCR's monitoring will include a review of reports and information submitted to OCR as required by this agreement and, if OCR determines necessary, may include a site visit or interviews of district personnel or students. OCR specifically reserves the right to request and obtain additional information at any stage of the monitoring of this agreement. Consistent with section II, C, of this agreement, OCR will continue monitoring the district's actions pursuant to this agreement until OCR notifies the district that it has provided sufficient information to demonstrate that it is equally effectively accommodating the athletic interests and abilities of members of both sexes.

- A. By **September 15, 2010,** the district will provide OCR with a copy of its preliminary evaluation, including all supporting documentation, conducted to comply with section III.B.1 of this agreement for OCR's review. If OCR determines that additional information is necessary, it will notify the district as promptly as possible.
- B. By **November 30, 2010,** if the results of the district's preliminary evaluation do not reflect that the district is providing interscholastic athletic participation opportunities for both sexes that are substantially proportionate to their high school enrollment, the district will provide OCR with a report that reflects the results of the evaluation conducted to comply with section III.B.2. of this agreement for OCR's review. The report will include all supporting documentation on which the evaluation is based. If OCR determines that additional information is necessary, it will notify the district as promptly as possible.
- C. By **March 15, 2011,** unless OCR has determined that the district is providing proportional athletic participation opportunities based on its review of the district's preliminary evaluation submitted under section IV.A, or that the interests and abilities of female high school students are being fully and effectively accommodated by the district's interscholastic athletics program based on its review of the evaluation submitted under section IV.B, the district will provide OCR with a report that reflects the steps that the district plans to take to implement section III.C. of this agreement, as applicable. If OCR determines that additional information is necessary, and in order to ensure that the district may begin the timely

implementation of the steps planned, OCR will notify the district as promptly as possible but not more than 60 days after the date that the information is received by OCR.

- D. By **June 30, 2012**, unless no implementation steps are necessary, either because OCR has determined that the district is providing proportional athletic participation opportunities or that the interests and abilities of female high school students are being fully and effectively accommodated by the district's interscholastic athletics program, the district will provide OCR with a report that reflects the district's implementation of the steps taken under section III.C. of this agreement.

Signed:

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George Boland  
Superintendent  
Idaho Falls School District 91  
690 John Adams Parkway  
Idaho Falls, Idaho 83401

6/24/10  
Date

/s/

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Gary D. Jackson  
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6/24/10  
Date