



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

July 2, 2012

Anthony J. Tata
Superintendent
Wake County Public Schools
3600 Wake Forest Road
Raleigh, North Carolina 27609

Re: Wake County Public Schools
OCR Case Number: 11-11-1040

Dear Mr. Tata:

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 Wake County Public Schools (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

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

“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 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 twenty high schools located in the District. Total high school student enrollment in the District in 2010-2011 was 40,524 students, with 20,916 male students (51.614%) and 19,608 female students (48.39%). All high schools in the District currently offer most of the interscholastic athletics teams that are sanctioned by the North Carolina High School Athletic Association (NCHSAA), the state high school athletic association. The District informed OCR that when NCHSAA sanctioned sports are not offered at particular high school, such as gymnastics and lacrosse are not offered at every high school, it is because there is not enough interest to sustain a team at the specific high school. In the 2010-2011 school year, there were 14,639 total participants in the interscholastic programs at the District’s high schools, with 9,151 male participants (62.51%) and 5,488 female participants (37.49%).

The District offers the following twelve sports for boys at most district high schools: baseball, basketball, cross country, football, golf, soccer, swimming, tennis, indoor track, outdoor track, lacrosse, and wrestling. The District offers the following twelve sports for girls at most district high schools: basketball, cross country, golf, soccer, softball, swimming, tennis, indoor track, outdoor track, lacrosse, gymnastics, and volleyball. Additionally, five girls at five different high schools completed on the boys wrestling teams during 2010-2011 school year.

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 twenty high schools ranging from a 5.86 percentage points to 15.00 percentage points. Districtwide, the disparity between the enrollment rate of girls and their interscholastic athletic participation rate in 2010-2011 was 10.9 percentage points, representing a total of 3,085 additional participation opportunities needed for female athletes.

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

Male and Female Enrollment and Athletic Participation Rates by Sex for 2010-2011 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
Apex	1212 (52.67%)	1089 (47.33%)	2301	549 (58.53%)	389 (41.47%)	938	5.86% 104 Opportunities
Athens Drive	968 (51.05%)	928 (48.95%)	1896	429 (61.11%)	273 (38.89%)	702	10.06% 138 Opportunities
Broughton-Needham	1092 (51.27%)	1038 (48.73%)	2130	518 (61.30%)	327 (38.70%)	845	10.03% 165 Opportunities
Cary	1196 (53.37%)	1045 (46.63%)	2241	594 (66.44%)	300 (33.56%)	894	13.07% 219 Opportunities
East Wake	751 (51.83%)	698 (48.17%)	1449	307 (65.04%)	165 (34.96%)	472	13.21% 120 Opportunities
Enloe, WG	1312 (50.13%)	1305 (49.87%)	2617	568 (62.01%)	348 (37.99%)	916	11.87% 217 Opportunities
Fuquay-Varina Senior	994 (50.82%)	962 (49.18%)	1956	395 (65.61%)	207 (34.39%)	602	14.80% 175 Opportunities
Garner Magnet	1195 (52.41%)	1085 (47.59%)	2280	436 (66.87%)	216 (33.13%)	652	14.46% 180 Opportunities
Green Hope	1036 (51.34%)	982 (48.66%)	2018	634 (57.58%)	467 (42.42%)	1101	6.25% 134 Opportunities
Heritage	436 (53.11%)	385 (46.89%)	821	251 (66.40%)	127 (33.60%)	378	13.30% 95 Opportunities
Holly Springs	1051 (53.16%)	926 (46.84%)	1977	428 (66.05%)	220 (33.95%)	648	12.89% 157 Opportunities
Knightdale	899 (52.18%)	824 (47.82%)	1723	335 (65.18%)	179 (34.82%)	514	13.00% 128 Opportunities
Leesville Road	1201 (50.55%)	1175 (49.45%)	2376	496 (60.64%)	322 (39.36%)	818	10.09% 163 Opportunities
Middle Creek	916 (51.23%)	872 (48.77%)	1788	502 (66.23%)	256 (33.77%)	758	15.00% 222 Opportunities
Millbrook	1262 (51.76%)	1176 (48.24%)	2438	506 (58.70%)	356 (41.30%)	862	6.94% 116 Opportunities
Panther Creek	1199 (51.26%)	1140 (48.74%)	2339	516 (57.91%)	375 (42.09%)	891	6.65% 116 Opportunities
Sanderson	988 (52.25%)	903 (47.75%)	1891	437 (64.36%)	242 (35.64%)	679	12.11% 157 Opportunities
Southeast Raleigh	889 (53.04%)	787 (46.96%)	1676	359 (65.27%)	191 (34.73%)	550	12.23% 127 Opportunities
Wakefield	1286 (50.29%)	1271 (49.71%)	2557	492 (62.76%)	292 (37.24%)	784	12.46% 194 Opportunities
Wake Forest-Rolesville	1033 (50.39%)	1017 (49.61%)	2050	399 (62.83%)	236 (37.17%)	635	12.44% 157 Opportunities
District Total	20916 (51.61%)	19608 (48.39%)	40524	9151 (62.51%)	5488 (37.49%)	14639	10.90% 3085 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. The District stated that its practice is to provide both varsity and junior varsity opportunities if there are sufficient athletes to sustain one or both teams.

Discussion

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 December 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 February 1, 2013, 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 February 1, 2013, 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 during the 2013-2014 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 September 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 Judith Risch, the Attorney Advisor who is handling this case, at (202) 453-5925.

Sincerely,

/s/

Alice B. Wender
Director

Enclosure

cc: Adam Mitchell, Attorney