



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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CLEVELAND, OH 44114-2611

REGION XV  
MICHIGAN  
OHIO

**JULY 02, 2012**

Loren L. Braverman, Esq.  
Columbus City Schools  
Office of Legal Services  
270 East State Street  
Columbus, Ohio 43215

Re: OCR Docket# 15-11-1036

Dear Mr. Braverman:

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 Columbus City 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 "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.<sup>1</sup> 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.

The District is located in Columbus, Ohio. The District has 24 high school programs, 17 of which have athletic programs. At the time this complaint was filed and during OCR's investigation to date, 16 of the high schools had athletic programs; during the 2011-2012 school year the District added a few sports at its newest high school and plans to continue to expand the athletic offerings at that school. Students not attending a high school with an athletic program may be eligible to participate in athletics at their home school, based on their neighborhood of residence. Total student enrollment in grades 9-12 in the District during the 2009-2010 school year was 15,069 students, with 7,580 male students (50.3%) and 7,489 female students (49.7%). In the 2009-2010 school year, there were 5,375 total participants in the District's high school athletic program, with 3,317 male participants (61.7%) and 2,058 female participants (38.3%).<sup>2</sup>

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<sup>1</sup> <http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>;

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

<sup>2</sup> OCR will collect enrollment and participation data from the District for the 2010-11 and 2011-12 school years as part of its monitoring of the District's implementation of the Agreement.

The District offers the following 12 sports for boys: basketball, baseball, bowling, cross country, football, golf, soccer, swimming, tennis, track, volleyball, and wrestling. The District offers the following 10 sports for girls: basketball, bowling, cross country, golf, soccer, softball, swimming, track, tennis, and volleyball. The specific sports offered at the 16 high schools for which OCR obtained information during its investigation to date vary and, with the exception of bowling and boys volleyball, all of the schools' teams compete in the Columbus City League, which is composed entirely of District high schools.<sup>3</sup> The Columbus City League offers all sports sanctioned by the Ohio High School Athletic Association (OHSAA), with the exception of boys ice hockey, girls field hockey, and girls gymnastics.

Information provided by the District revealed that girls were underrepresented in the interscholastic athletics program at 15 of the 16 District high schools that offered interscholastic sports during the 2009-2010 school year, with the disparities between their enrollment and interscholastic athletic participation rates at the 16 high schools ranging from a low of -3.6 percentage points to a high of 18.4 percentage points. District-wide, the disparity between the enrollment rate of girls and their interscholastic participation rate in 2009-2010 was 11.4 percentage points, representing a total of 1,116 additional participation opportunities needed for female athletes. As noted above, however, students enrolled in a high school program other than their neighborhood school are allowed to participate in athletics at their home school. The table below includes the total student enrollment for each school with an athletic program, but not the total possible athletic participants for each school. In addition, the participation rates are not disaggregated to reflect which students are participating in a particular school's program from other schools.

Male and Female Enrollment and Athletic Participation Rates by Sex for the 2009-10 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
Africentric	153 (46.2%)	178 (53.8%)	331	104 (55%)	85 (44.9%)	189	8.9 36
Beechcroft	445 (53.1%)	393 (46.9%)	838	181 (49.4%)	185 (50.5%)	366	-3.6 -25
Briggs	545 (50.0%)	544 (50.0%)	1089	191 (60.2%)	126 (39.7%)	317	10.3 65
Brookhaven	491 (52.3%)	447 (47.7%)	938	283 (67.5%)	136 (32.5%)	419	15.2 122
Centennial	420 (49.9%)	421 (50.1%)	841	301 (64.7%)	164 (35.3%)	465	14.8 138
East	370 (48.2%)	397 (51.8%)	767	137 (57.3%)	102 (42.7%)	239	9.1 45
Eastmoor	336	383	719	199	157	356	9.2

<sup>3</sup> The bowling teams participate in the Central Ohio Bowling League and the boys volleyball team participates in the Ohio High School Boys Volleyball Association- Division 2 East.

	(46.7%)	(53.3%)		(55.9%)	(44.1%)		70
Independence	449 (48.8%)	471 (51.2%)	920	209 (61.1%)	133 (38.8%)	342	12.4 86
Linden- McKinley STEM	270 (55.0%)	221 (45.0%)	491	145 (63.9%)	82 (36.1%)	227	8.9 37
Marion- Franklin	497 (48.9%)	520 (51.1%)	1017	263 (67.2%)	128 (32.7%)	391	18.4 147
Mifflin	366 (53.4%)	320 (46.6%)	686	204 (65.8%)	106 (34.2%)	310	12.4 72
Northland	582 (49.0%)	605 (51.0%)	1187	253 (57.6%)	186 (42.4%)	439	8.6 77
South	280 (50.7%)	272 (49.3%)	552	149 (66.8%)	74 (33.2%)	223	16.1 71
Walnut Ridge	470 (54.3%)	396 (45.7%)	866	210 (61.9%)	129 (38.1%)	339	7.6 48
West	571 (52.9%)	508 (47.1%)	1079	196 (64.7%)	107 (35.3%)	303	11.8 68
Whetstone	580 (56.5%)	447 (43.5%)	1027	292 (64.8%)	158 (35.1%)	450	8.4 67
Total	6825 (51.1%)	6523 (48.9%)	13348	3317 (61.7%)	2058 (38.3%)	5375	10.6 1116 <sup>4</sup>

The District does not have a specific policy or procedure for students or parents to request additional sports or levels of sports. The District's 16 high school athletic directors consistently reported to OCR that their decisions about whether to add or eliminate sports at their high schools are dictated by students' interest, which are generally obtained through posting sign-up sheets and hosting interest meetings at their own schools during lunchtime. The District has not conducted a District-wide survey to assess student interests at the high school level<sup>5</sup>, although one of the 16 high schools conducted a survey in 2010 to assess interest. All of the District's athletic directors indicated that they add a sport when interest is shown. The District attempted to add girls field hockey at two schools in 2004 but determined that there was not sufficient interest. The District added girls and boys bowling as a league sport in 2008. The District has also attempted to add girls soccer at multiple schools in order to host a city championship but has been unable to retain the minimum number of teams.

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 that, 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.

<sup>4</sup> Figures do not match exactly due to rounding.

<sup>5</sup> The District did a middle school interest survey in 1998 that resulted in the addition of several sports at the middle school level.

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, by October 10, 2012, the District will conduct a comprehensive assessment to determine whether female students have unmet athletics interests. The assessment at each of the 17 high schools will include students who are enrolled in other District high schools that do not have athletics programs but who are eligible to participate in athletics at the school. The assessment will also include a survey of eighth-grade female students. The District is required to report to OCR on its assessment by December 14, 2012. 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 December 14, 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 second semester of the 2012-2013 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.

Based on the agreement, OCR is closing the investigation as of the date of this letter. OCR will, however, 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.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

We appreciate the cooperation of District staff during the investigation of this complaint. We look forward to receiving the District's first monitoring report on or before July 31, 2012. Please address your monitoring report to Traci Ext, Chief Attorney, who will be handling OCR's monitoring of this agreement. Ms. Ext can be reached at (216) 522-2671 or [Traci.Ext@ed.gov](mailto:Traci.Ext@ed.gov). You may also direct any questions or concerns about this letter to Ms. Ext.

Sincerely,

/S/

Catherine D. Criswell  
Director

Enclosure