



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

May 3, 2023

Paula Deacon
Superintendent
By email: paula.deacon@leominsterschools.org

Re: Complaint No. 01-16-1257
Leominster Public Schools

Dear Superintendent Deacon:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Leominster Public Schools (District). While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time that OCR has taken to resolve this case, and we thank the District for its patience. The Complainant alleged that the District discriminates against female students on the basis of sex. Specifically, the Complainant alleged that the District's selection of sports and levels of competition does not effectively accommodate the interests and abilities of members of both sexes (Allegation 1). The Complainant also alleged that the District is not providing an equal opportunity for female athletes in the following areas: equipment and supplies; scheduling of games and practice times; travel; opportunity for coaching; assignment and compensation of coaches; locker rooms and practice and competitive facilities; medical and training facilities and services; and publicity (Allegation 2). Lastly, the Complainant alleged that the District failed to promptly and equitably respond to complaints that the Complainant raised with the District about the above issues (Allegation 3).

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance from the U.S. Department of Education. Because the District receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Title IX.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following allegations for investigation:

1. Whether the District denies female athletes equal opportunities to participate in its interscholastic athletics program by not effectively accommodating their interests and abilities, in violation of 34 C.F.R. § 106.41(a) and (c)(1).
2. Whether the District denies female athletes equal opportunities under the following factors addressed at 34 C.F.R. § 106.41(c)(2)-(8) and (10):

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

- a) the provision of equipment and supplies,
 - b) the scheduling of games and practice time,
 - c) travel,
 - d) the opportunity to receive coaching,
 - e) the assignment and compensation of coaches,
 - f) the provision of locker rooms and practice and competitive facilities,
 - g) the provision of medical and training facilities and services, and
 - h) publicity.
3. Whether the District failed to promptly and equitably resolve the Complainant's complaints of discrimination based on sex, in violation of 34 C.F.R. § 106.8.¹

During the investigation, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant and the District's current Athletic Director;² and reviewed publicly available information concerning the District's interscholastic athletics program. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

ALLEGATIONS 1 and 2

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.41(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club, or intramural athletics offered by a school district. The Title IX regulation, at 34 C.F.R. § 106.41(c), states that a school district which operates or sponsors interscholastic, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes.

Effectively Accommodating Interests and Abilities

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, club, or intramural athletics, *see* 34 C.F.R. § 106.41(c)(1), OCR uses the three-part test set forth in the Policy Interpretation.³ The three-part test provides the following three compliance options:

¹ Amendments to the Title IX regulation went into effect on August 14, 2020. However, the prior Title IX regulation that was in effect at the time when the alleged acts occurred serves as the basis for OCR's determination in this matter.

² The District hired a new Athletic Director in 2018.

³ *See* Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics (Policy Interpretation), 44 Fed. Reg. 71,413, 71,413 (Dec. 11, 1979) (while the "Policy Interpretation is designed specifically for intercollegiate athletics," "its general principles will often apply to club, intramural, and interscholastic athletic programs").

- 1) whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- 2) where the members of one sex have been and are underrepresented among interscholastic athletes, whether the school district can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
- 3) where the members of one sex are underrepresented among interscholastic athletes, and the school district cannot show a history and continuing practice of program expansion as described above, whether the school district can demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

If a school district has met any part of the three-part test, OCR will determine that the school district is meeting this requirement.

Program Components

In determining whether a school district is in compliance with Title IX with respect to its athletics program, OCR assesses whether the school district provides equivalent treatment, services, and benefits regarding athletic program components. The overall equivalence standard allows a school district to achieve its own program goals within the framework of providing equal athletic opportunities. To determine equivalency for boys' and girls' athletic programs, OCR assesses program components by comparing the following: availability, quality, kind of benefits, kind of opportunities, and kind of treatment.

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the school district may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Compliance concerns will exist only if disparities are of a substantial and unjustified nature in a school district's overall athletic program; or if disparities in individual program areas are substantial enough in and of themselves to deny equality of athletic opportunity.

Equipment and Supplies

Equipment and supplies include, but are not limited to: uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and conditioning and weight training equipment. When determining whether a school district is in compliance with Title IX with respect to the provision of equipment and supplies, OCR examines, among other factors, the equivalence for boys and girls of:

- 1) The quality of equipment and supplies;
- 2) The amount of equipment and supplies;
- 3) The suitability of equipment and supplies;
- 4) The maintenance and replacement of the equipment and supplies; and
- 5) The availability of equipment and supplies.

A school district has a responsibility under Title IX to ensure that equivalent benefits and services are provided to members of both sexes in its athletics programs, regardless of the funding source(s) for these benefits and services. Thus, OCR considers benefits and services provided through the use of private funds, including booster club funding, in combination with all other benefits and services. Where booster clubs provide benefits or services that assist only teams of one sex, the district must ensure that teams of the other sex receive equivalent benefits and services.

Scheduling of Games and Practice Time

When determining whether a school district is in compliance with Title IX with respect to the scheduling of games and practice time, OCR examines, among other factors, the equivalence for boys and girls of:

- 1) The number of competitive events per sport;
- 2) The number and length of practice opportunities;
- 3) The time of day competitive events are scheduled;
- 4) The time of day practice opportunities are scheduled; and
- 5) The opportunities to engage in available pre-season and post-season competition.

Travel and Per Diem Allowance

When determining whether a school district is in compliance with Title IX with respect to travel and per diem allowance, OCR examines, among other factors, the equivalence for boys and girls of:

- 1) Modes of transportation;
- 2) Housing furnished during travel;
- 3) Length of stay before and after competitive events;
- 4) Per diem allowances; and
- 5) Dining arrangements.

Opportunity to Receive Coaching

The regulation at 34 C.F.R. § 106.41(c)(5) requires that, in determining whether equal opportunities are provided to both sexes in an athletics program, OCR consider the availability of coaches. There are several considerations to take into account in assessing Title IX compliance with this requirement; specifically, the relative availability of full-time, part-time, and assistant coaches. A violation will be found where assignment policies or practices deny male and female athletes coaching of equivalent availability.

Assignment and Compensation of Coaches

In general, a violation of 34 C.F.R. § 106.41(c)(6) will be found only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality,

nature, or availability. Nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of competition will be considered. Where these or similar factors represent valid differences in skill, effort, responsibility or working conditions, they may, in specific circumstances, justify differences in compensation. Similarly, there may be unique situations in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary.

When determining whether a school district is in compliance with Title IX with respect to assignment of coaches, OCR examines, among other factors, the equivalence for boys' and girls' coaches of:

- 1) Training, experience, and other professional qualifications; and
- 2) Professional standing.

When determining whether a school district is in compliance with Title IX with respect to compensation of coaches, OCR examines, among other factors, the equivalence for boys' and girls' coaches of:

- 1) Rate of compensation (per sport, per season);
- 2) Duration of contracts;
- 3) Conditions relating to contract renewal;
- 4) Experience;
- 5) Nature of coaching duties performed;
- 6) Working conditions; and
- 7) Other terms and conditions of employment.

Locker Rooms and Practice and Competitive Facilities

When determining whether a school district is in compliance with Title IX with respect to the provision of locker rooms, practice, and competitive facilities, OCR examines, among other factors, the equivalence for boys and girls of:

- 1) Quality and availability of the facilities provided for practice and competitive events;
- 2) Exclusivity of use of facilities provided for practice and competitive events;
- 3) Availability of locker rooms;
- 4) Quality of locker rooms;
- 5) Maintenance of practice and competitive facilities; and
- 6) Preparation of facilities for practice and competitive events.

Medical and Training Facilities and Services

When determining whether a school district is in compliance with Title IX with respect to medical and training facilities and services, OCR examines, among other factors, the equivalence for boys and girls of:

- 1) Availability of medical personnel and assistance;
- 2) Health, accident and injury insurance coverage;
- 3) Availability and quality of weight and training facilities;
- 4) Availability and quality of conditioning facilities; and
- 5) Availability and qualifications of athletic trainers.

Publicity

When determining whether a school district is in compliance with Title IX with respect to publicity, OCR examines, among other factors, the equivalence for boys and girls of:

- 1) Availability and quality of sports information personnel;
- 2) Access to other publicity resources for boys' and girls' programs; and
- 3) Quantity and quality of publications and other promotional devices featuring boys' and girls' programs.

Summary of Preliminary Investigation

Athletic Opportunities

The District operates three high school programs: Leominster High School, Center for Technical Education Innovation, and Leominster Center for Excellence, which all compete under the Leominster High School's (School's) athletic program. The School's sports teams compete in the Midland Wachusett League of the Massachusetts Interscholastic Athletic Association (MIAA). The District informed OCR that for the 2015-2016 school year, the District's total enrollment for grades 9 through 12 was 1,803 with 981 male students and 822 female students. Therefore, approximately 54.4% of the student population was male and 45.6% was female.

The District provided OCR with rosters for its interscholastic sports teams for the 2014-2015 and 2015-2016 school years. The rosters indicate that for the 2015-2016 school year, the School provided 480 athletic opportunities for boys and 324 for girls, meaning that 59.7% of the School's athletic opportunities were provided to boys and 40.3% to girls.

OCR reviewed publicly available data⁴ regarding the School’s athletic participation opportunities and the District’s enrollment from the 2011-2012 through the 2019-2020 school years.⁵ The public data differs to varying degrees from analogous data that the District provided to OCR for the 2014-2015 and 2015-2016 school years and with individual team roster data that the District provided to OCR for those two years.⁶ The table below reflects the data provided by the District to OCR for the 2014-2015 and 2015-2016 school years and publicly available data for the remaining years. The column on the right shows the number of additional athletic opportunities necessary for female students to reach *exact* proportionality with male students from the 2010-2011 school year through the 2019-2020 school year:

School Year	Female Enrollment (%)	Female Athletic Opportunities (%)	Additional Female Athletic Opportunities Needed to Achieve Exact Proportionality (#)
2010-2011	50.2%	41%	153
2011-2012	48.9%	39.4%	148
2012-2013	48.4%	45.6%	47
2013-2014	47.2%	41.8%	88
2014-2015	46.1%	41.6%	73
2015-2016	45.6%	40.7%	76
2016-2017	47.1%	40.9%	91
2017-2018	47.2%	41.7%	86
2018-2019	47.5%	40.4%	97
2019-2020 ⁷	48.4%	38.1%	99

The District informed OCR that, as of the 2021-2022 school year, the School offered the following interscholastic athletic teams:⁸

⁴ OCR reviewed participation data posted on MIAA’s website (*see, e.g.,* https://miaa.net/wp-content/uploads/2022/01/2019-2020_Participation_by_School.pdf) and enrollment data posted on the Massachusetts Department of Elementary and Secondary Education’s website (*see, e.g.,* <https://profiles.doe.mass.edu/profiles/student.aspx?orgcode=01530000&orgtypecode=5&fycode=2020>).

⁵ The District represented to OCR that the School provided 341 athletic opportunities for boys and 276 for girls during the 2020-2021 school year. The District has not provided OCR with rosters for the 2020-2021 school year, and MIAA had not posted student participation numbers for that year as of the date of this letter.

⁶ The differences between the total number of student-athletes reported by the District, the MIAA data, and the number of athletes reflected on the individual team rosters impact the analysis of athletic opportunities. Because the District requested a voluntary resolution, OCR did not seek to reconcile these differences.

⁷ No spring sports were allowed due to the COVID-19 pandemic during the 2019-2020 school year.

⁸ The District also provided OCR certain information regarding the School’s cheerleading teams. Cheerleading and dance may be “sports” for the purposes of Title IX, depending upon the activities’ structure, administration, team preparation, and competition. Because the District requested a voluntary resolution, OCR did not undertake this analysis with regard to the School’s cheerleading teams or analyze information provided by the District regarding these teams. OCR notes, however, that the MIAA has not sanctioned any cheerleading or dance competitions. *See* <https://miaa.net/wp-content/uploads/2022/04/MIAA-Handbook-21-23revised.pdf>.

Boys' Varsity	Girls' Varsity	Co-ed Varsity
1. Baseball	1. Basketball	1. Wrestling ⁹
2. Basketball	2. Cross Country	
3. Cross Country	3. Field Hockey	
4. Football	4. Ice Hockey	
5. Golf	5. Indoor Track	
6. Ice Hockey	6. Lacrosse	
7. Indoor Track	7. Outdoor Track	
8. Lacrosse	8. Soccer	
9. Outdoor Track	9. Softball	
10. Soccer	10. Swim	
11. Swim	11. Tennis	
12. Tennis	12. Volleyball	
13. Volleyball		

Boys' Junior Varsity	Girls' Junior Varsity	
1. Baseball	1. Basketball	
2. Basketball	2. Field Hockey	
3. Football	3. Indoor Track	
4. Ice Hockey	4. Lacrosse	
5. Indoor Track	5. Outdoor Track	
6. Lacrosse	6. Soccer	
7. Outdoor Track	7. Softball	
8. Soccer	8. Volleyball	
9. Volleyball		

Boys' Freshman	Girls' Freshman	
1. Baseball	1. Basketball	
2. Basketball	2. Softball	
3. Football	3. Volleyball	

The District reported that the School also offered, during the 2021-2022 school year, two co-ed Unified Sports teams (basketball and track and field).¹⁰

The District reported that, since 2004, the School has added ten teams to its athletics program: four of which are for boys (varsity and JV volleyball in 2004 and varsity and JV lacrosse in 2005), four of which are for girls (varsity and JV lacrosse in 2008, varsity ice hockey in 2013,

⁹ The District reported that only one girl competed on the wrestling team during the 2014-2015 school year and no girls competed during the 2015-2016 school year. The District has not provided rosters for its wrestling team since 2016.

¹⁰ Unified Sports, established through Special Olympics, provide students with and without intellectual disabilities the opportunity to train and compete in sports activities together on a team.

and freshman volleyball in 2021), and two of which are co-ed (Unified basketball in 2018 and Unified track and field in 2019). The District noted that it discontinued its girls' freshman field hockey program in 2012 due to a lack of participants, but added a middle school field hockey program in 2019. The District represented that that no other athletic programs have been added or eliminated since 2004. The District reported that in 2019, it started looking into creating a separate girls' golf team in response to some student interest, but indicated that its efforts stalled during the COVID-19 pandemic.¹¹

The District stated that, as of the 2015-2016 school year, it offered all sports sanctioned by MIAA, except for gymnastics, rugby, and ski. The District explained that it does not offer gymnastics or rugby because of a "lack of student athletes," and noted that rugby is a "new program to the state." The District also reported that, while it does not offer a ski program, it participates in a cooperative program with a neighboring host district.

The District reported that it did not administer any student interest surveys from 2006 through 2022. The District also reported that it did not have a published policy or procedure under which students, parents, or others could request that a sport or level be added or elevated.

Equipment and Supplies

The Complainant alleged that as of 2016, the District had not replaced uniforms for several girls' teams in many years, but had replaced the uniforms for various boys' teams two or more times during the same period. The Complainant noted, for example, that both the boys' varsity basketball and football teams had received new uniforms during the 2015-2016 school year. The Complainant also alleged that the girls' varsity ice hockey team wore old uniforms from the boys' ice hockey team and that the girls' freshman softball team had been offered old uniforms from the baseball team. The Complainant further alleged that girls' teams often had to pay for parts of their uniforms, noting, for example, that the girls' tennis team had to buy their skirts and the softball team had to buy their pants.¹²

The District informed OCR that its Athletic Director meets with each head/varsity coach at the end of the sports season to discuss and review the condition of the team's equipment, supplies, and uniforms. The District then creates a list of equipment needs for each sport, which is used in the budget process for the following fiscal year. The District provided OCR with data regarding the District's and outside groups' (e.g., booster clubs) expenditures for the School's athletic program for the 2014-2015 and 2015-2016 school years. The data show that, *for uniforms*, the District spent \$6,619.14 (\$6,619.14 for boys' teams and \$0 for girls' and co-ed teams) during the 2014-2015 school year and \$22,426.57 (\$21,476.68 for boys' teams, \$779.94 for girls' teams, and \$169.95 for co-ed teams) during the 2015-2016 school year.

According to the District's data response, the District replaced uniforms for football (15 shirts), girls' ice hockey, and girls' tennis in 2015; baseball, boys' basketball, football, and girls' volleyball (3 singlets) in 2016; and field hockey and boys' and girls' soccer in 2017. The

¹¹According to the District, female students may compete on the boys' golf team.

¹² The data produced by the District for 2014-2015 and 2015-2016 indicate that athletes on the softball team and boys' swim team may have purchased parts of their uniforms.

condition of all uniforms was listed as either new, good, or fair. OCR notes that there appear to be discrepancies in the data reported by the District regarding uniform expenditures and replacements—for example, the District reported to OCR that it replaced uniforms for girls’ ice hockey in 2015, but did not report spending any money on uniforms for girls’ ice hockey.

The District also reported that, *for supplies and equipment*, it spent \$24,111.92 (\$18,926.83 for boys’ teams, \$5,061.66 for girls’ teams, and \$123.43 for co-ed teams) during the 2014-2015 school year and \$15,448.10 (\$8,376.47 for boys’ teams, \$7,059.68 for girls’ teams, and \$11.95 for co-ed teams) during the 2015-2016 school year.

The Complainant alleged that the softball teams did not have a functioning pitching machine for many years, requiring the team members to use third-party batting cages during tryouts and throughout the season. The Complainant noted that each team member had to pay \$5.00, collected by the softball coach, to use these facilities.

The District reported to OCR that it purchased a new pitching machine for the softball teams in May 2016 because the previous one was no longer functional. The District noted that the baseball teams’ pitching machine (which was last replaced in 2009) was in poor condition in 2016, but that the District did not have the budget to replace it at that time. The District informed OCR that, during past spring seasons, the baseball booster club had purchased time for the baseball players at a local batting cage facility. The District stated that, during the 2015-2016 spring season, the District purchased time for the softball players at the same facility until their pitching machine was replaced in May 2016.

The District reported that expenses for its athletic teams also included: awards, contractual services, department of public works, emergency medical technicians, games management, maintenance, officials, police, spirit apparel, and transportation. Below is a breakdown of how expenses were allotted by boys’, girls’, and co-ed teams, according to data provided by the District:

	Boys’ Programs	Girls’ Programs	Co-ed Programs
Total Funds Expended in 2014-2015	\$177,345.65	\$86,677.68	\$7,030.45
Total Funds Expended in 2015-2016	\$198,075.27	\$101,898.70	\$7,417.36

OCR interviewed the District’s current Athletic Director in the spring of 2022. The Athletic Director stated that he inventories team uniforms at the end of each season and assesses their condition to determine whether they need to be replaced. He stated that the District does not have a set replacement cycle for uniforms, but that it purchases new varsity uniforms about every two to three years. He stated that he is not aware of any instance since he became Athletic Director in 2018 of athletes or teams being required to purchase their own uniforms or equipment.

The Athletic Director reported that funding from booster clubs is not a factor when allocating funding to a particular team. He also indicated that the District does not have a policy or guidelines concerning how to handle funding from booster clubs.

Scheduling of Games and Practice Time

Number of Regular Season Competitive Events Per Sport

The Complainant told OCR that the girls' softball and boys' baseball teams historically had 20 games per season, which was the maximum number of games allowed by MIAA. The Complainant alleged, however, that the District decreased the number of games for the softball teams to 18 for the spring 2015 and 2016 seasons, while the baseball teams continued to have 20 games.

The District informed OCR that, during the 2014-2015 school year, five varsity teams scheduled fewer competitions than the maximum allowed by MIAA. Those teams and the number of games scheduled out of those allowed by MIAA are as follows:

- girls' ice hockey (18 out of 20)
- girls' softball (18 out of 20)
- boys' tennis (18 out of 20)
- boys' volleyball (18 out of 20)
- girls' volleyball (19 out of 20)

The District reported that, with the exception of softball, these teams did not schedule the maximum number of competitions due to "difficulty scheduling." The District explained that the softball team did not schedule 20 games because, "in cooperation with [the] Varsity coach, it was determined that with XXXXXXXXXXXXXXXXXXXX a schedule of 18 games would be beneficial and safe for the student athletes."

The District informed OCR that, during the 2015-2016 school year, six varsity teams scheduled fewer competitions than the maximum allowed by MIAA. Those teams and the number of games scheduled out of those allowed by MIAA are as follows:

- boys' basketball (18 out of 20)
- girls' basketball (18 out of 20)
- girls' ice hockey (17 out of 20)
- girls' softball (18 out of 20)
- boys' tennis (17 out of 20)
- boys' volleyball (18 out of 20)

The District reported that both basketball teams did not schedule 20 games because 20 games are not required and having a winning season record over .500 allows for post-season play for which both teams qualified. The District again reported that the softball team did not schedule 20 games as it had XXXXXXXXXXXXXXXXXXXX. And, with respect to the other three teams, the District stated that it encountered "difficulty scheduling."

The District provided OCR competition schedules for most of its interscholastic sports teams for the 2014-2015 and 2015-2016 school years. OCR notes that there are some discrepancies between the number of competitions reported by the District and the schedules provided, including additional teams not competing in the maximum allowed by MIAA.

Number and Length of Practice Opportunities

The Complainant alleged that the varsity softball coach routinely cancelled practices or showed up late to practices during the spring 2013, 2014, 2015, and 2016 seasons while the varsity and junior varsity baseball coaches held practices as scheduled during that period.

The District stated that all teams practice every weekday during the regular season. The District noted that some teams hold non-mandatory weekend practices on occasion. The District provided OCR with a limited practice schedule for the 2014-2015 winter season, but has not provided practice schedules for other seasons/years.

Time of Day Competitive Events Are Scheduled

The Complainant alleged that the District has provided the boys' teams more "prime time" games and more opportunities to "play under the lights" than the girls' teams. The Complainant stated, for example, that during the 2016 season, the boys' baseball team had four Saturday games and the girls' softball team had none. The Complainant also stated that the softball field does not have lights (unlike the baseball team's Doyle Field), so all home softball games have to be scheduled during the daytime.

The District reported to OCR that prime time for most sports is either 4:00 p.m. or 7:00 p.m., with the exception of football (Friday night or Saturday afternoon), golf (3:30 p.m.), volleyball (5:00 p.m. or 6:00 p.m.), and wrestling (7:00 p.m. or Saturday morning).

Opportunities to Engage in Available Pre-Season and Post-Season Competition

The District reported that MIAA does not allow competition outside the regular season, thereby precluding pre-season competition. The District noted, however, that varsity teams are provided the opportunity to schedule pre-season scrimmages, and that several of its varsity teams scheduled scrimmages during the 2014-2015 and 2015-2016 school years. Information provided by the District indicates that, during the 2014-2015 school year, boys' teams participated in 13 scrimmages while girls' teams participated in eight, and, during the 2015-2016 school year, boys' teams participated in 15 scrimmages while girls' teams participated in eight. The District reported that post-season competition is based on a formula determined by MIAA. The District stated that, during the 2014-2015 school year, six boys' teams and two girls' teams qualified for post-season competitions; and, during the 2015-2016 school year, five boys' teams and two girls' teams qualified for post-season competition.

The Athletic Director told OCR that he was not aware of any changes in how practices or games were scheduled since he became Athletic Director in 2018. He stated that he tries to schedule the

same number of games for both sexes across all sports. He noted that scheduling can be difficult sometimes because certain teams are in different leagues with more available games.

Travel and Per Diem Allowance

The District informed OCR that its Athletic Office develops a transportation schedule for each season based on the competitive schedules. The District reported that it uses a combination of privately-owned and District-owned vehicles (e.g., vans and buses) to transport students to practices and competitions.

Information provided by the District indicates that it spent more on travel for boys' teams than girls' teams during the 2014-2015 and 2015-2016 school years. The District has not provided OCR with any information regarding which modes of transportation are provided to which teams, housing furnished during travel, length of stay before and after competitive events, per diem allowances, or dining arrangements.

Opportunity to Receive Coaching

The Complainant alleged that as of 2016, there were more coaches for the District's boys' athletic teams than there were for its girls' teams. The Complainant also alleged that some of the boys' teams, such as football and baseball, had additional volunteer coaches.

The District provided OCR lists of its coaching assignments for the 2014-2015 and 2015-2016 school years. Based on that data, OCR determined that, in the 2014-2015 school year, there was approximately one coach assigned to every 10.6 male athletes and every 11.2 female athletes; and that, in the 2015-2016 school year, there was approximately one coach assigned to every 10 male athletes and every 9.5 female athletes.

The Athletic Director reported to OCR that since 2018, the District has added 11 assistant varsity coaching positions: seven for girls' teams¹³ and four for boys' teams. The Athletic Director stated that it added assistant positions to the varsity teams that did not previously have any assistants. He stated that the District does not consider the number of volunteer coaches when deciding whether to add District-funded positions.

Assignment and Compensation of Coaches

The Complainant alleged that in 2016, many of the girls' teams did not have as qualified coaches as the boys' teams. The Complainant alleged that some of the girls' coaches could not provide basic instruction for the sport they were coaching. The Complainant noted that, in comparison, the varsity football head coach was "highly qualified," which has led to a successful program. The Complainant also alleged that volunteer coaches for some teams, including football and baseball, have been paid with outside funds through their booster clubs.

¹³ The Athletic Director stated that two of the coaching positions were for cheerleading. As explained above, OCR is not including cheerleading in its analysis of the District's interscholastic athletic programs.

The District reported to OCR that its procedures for selecting coaches and determining the number of coaches for each team and their salaries are governed by the collective bargaining agreement between the Leominster School Committee and the Leominster Education Association. The District provided OCR with a copy of the collective bargaining agreement, effective July 1, 2015 to June 30, 2018. According to the agreement, the Athletic Director is responsible for reviewing coaching applicants and, after consulting with the School administrator and the head coach, if applicable, making recommendations to the Superintendent. The agreement provides that selection should be based upon the qualifications of the applicant with preference given to current employees over equally qualified external candidates. The Athletic Director is also responsible for evaluating coaches at the end of their contract periods.¹⁴

The collective bargaining agreement sets forth a salary guide for coaching staff, which takes into consideration the staff member’s salary, experience, and promotions. The first step of the salary guide is a percentage of the coach’s base level salary. The percentages assigned to each varsity head coaching position are as follows:

Sports Teams	Percentage of Base Level Salary
Football	20%
Basketball	14%
Baseball, Field Hockey, Ice Hockey, Lacrosse, Soccer, and Softball	12%
Cross Country, Indoor and Outdoor Track, Swimming, Wrestling, Volleyball	10%
Tennis	8%
Golf	7%

The District provided OCR with coaching compensation data for the 2014-2015 and 2015-2016 school years. The District represented that these compensation figures include funds provided by booster clubs. The data indicate that during the 2014-2015 and 2015-2016 school years, the District/booster clubs provided less total stipend compensation to coaches for coaching female athletes as compared to male athletes, but slightly more compensation per female athlete coached than per male athlete coached.

The District also provided OCR with data regarding coaching experience levels for the 2014-2015 and 2015-2016 school years. In particular, the District reported to OCR which coaches had fewer than five years’ experience, five to ten years’ experience, and more than ten years’ experience.

¹⁴ The Athletic Director reported to OCR that the collective bargaining agreement had been renegotiated since 2016. He noted that there had not been any significant changes that affected the athletics program, aside from the allowance to hire additional assistant varsity coaches. The Athletic Director stated that none of these coaching positions are funded by booster clubs.

For the 2014-2015 and 2015-2016 school years, football had the most experienced coaches—11 out of 14 coaches had over 10 years’ experience; followed by baseball, boys’ basketball (2015-2016 season only), girls’ basketball, and softball—each program had two or more coaches with over 10 years’ experience. The District’s data also showed that golf, boys’ ice hockey, boys’ indoor track, girls’ indoor track (2014-2015 season only), girls’ outdoor track, and boys’ tennis had coaches with the least experience—each program had only coaches with fewer than five years’ experience.

Below is a graph that depicts the experience levels of the boys’ and girls’ coaches during the 2015-2016 school year:



As shown above, half of the coaches of girls’ teams and approximately one-third of the coaches of boys’ teams had fewer than five years of experience; approximately one-third of the coaches of girls’ and boys’ teams had five to ten years of experience; and one-fifth of the coaches of girls’ teams and approximately one-third of the coaches of boys’ teams had more than ten years of experience.

Locker Rooms and Practice and Competitive Facilities

The Complainant alleged that the girls’ softball facilities “are not equivalent” to the boys’ baseball facilities. In particular, the Complainant alleged that the baseball facilities have more seating, as well as several features that the softball facilities do not have, such as lights, mound and field covers, batting tunnels and cages, brick dugouts with lighting, bullpens, high fences, and a large scoreboard. The Complainant also alleged that use of the softball facilities is limited because city recreation programs also use the fields. The Complainant stated that the baseball teams have access to their facilities at night with lights and during the weekends, whereas the softball teams have “virtually no access to the softball facilities over the weekend, except for a limited time on Sunday mornings for practices.” The Complainant further alleged that the varsity baseball fields are better maintained than the softball fields, and noted, for example, that

the field used by the softball team for games (i.e., Lassie League Complex) was not ready for play at the start of the 2014-2015 season.

The District informed OCR that its athletic program uses a variety of District-owned, city-owned, and university-owned facilities and fields for practices and competitions. The teams that practice and/or compete at District-owned facilities and fields include basketball, field hockey (for practice), football (for practice), indoor track, volleyball, and wrestling. The remaining teams practice and/or compete at either city-owned or university-owned facilities.

The District provided OCR with a breakdown of the facilities and fields used by each team for practice and competition as of the 2015-2016 school year. According to the District, the baseball teams use the Doyle Baseball Field, the Sky View Baseball Field, and the Babe Ruth Field while the softball teams use the Lassie League Complex (which contains three fields) and the Fournier Field. The District stated that Doyle Field is the best baseball field in the city and includes a fence, bleachers, lights, an electronic scoreboard, dugouts, and restrooms. The District reported that the fields at the Lassie League complex are currently the best softball fields in the city and that the main field, which is used by varsity, includes a fence, bleachers, a scoreboard, and restrooms. All of the baseball and softball fields are within five miles of the School.

The District informed OCR that the baseball and softball teams have priority, in-season access to the fields from 2:30 p.m. to 6:00 p.m. Mondays through Fridays and that the District provides transportation to the fields. The District noted that the softball team also has access to the Lassie League field on Sunday mornings for non-mandatory practices. The District also reported that, while the city maintains the baseball and softball fields, the Athletic Department contracts with a vendor to rake and line the fields prior to competition.

The District reported to OCR that the Leominster City Council had approved funding for a new athletic complex at the School, which would include a track, a designated softball field, as well as two additional turf fields. The District also reported that the School had recently renovated its gym facilities to install additional volleyball nets and basketball hoops. The Athletic Director noted that the School added the volleyball nets to accommodate the increased interest in girls' volleyball.

The Complainant informed OCR that the District rents ice time at local ice rinks for its hockey teams. The Complainant alleged that the girls' ice hockey team plays at a rink that is farther away from the School than the rink where the boys' team plays, and that the girls' team is not provided transportation.

The District reported to OCR that its hockey program uses the Wallace Rink at Fitchburg State University (5.2 miles from the School) and the Gardner Veterans Arena (14 miles from the School) for practice and games. Competition schedules provided by the District for the 2014-2015 and 2015-2016 school years show that the boys' teams played all of their home games at the Wallace Rink and that the girls' team played four home games at the Gardner Veterans Arena and two home games at the Wallace Rink each season. The District has not provided OCR with practice schedules for its ice hockey program.

The Athletic Director told OCR that for ice hockey, the boys' program practices and competes at the Wallace Rink and the girls' program practices at the Gardner Veterans Arena and plays about half their games at the Wallace Rink and the other half at Gardner Veterans Arena. He noted that while the girls must travel farther, they have practice at 4pm every weekday, which is a preferred practice time for ice hockey. He stated that the boys' and girls' programs are responsible for their own transportation to practice and home games.

Medical and Training Facilities and Services

The Complainant alleged that the District provides medical personnel at the Doyle Field complex (where the majority of athletic competitions are played) but does not provide any medical personnel at softball games.

The District informed OCR that the Athletic Department contracts with local EMTs for coverage at most sporting competitions. The District reported, however, that the School does not provide medical personnel at baseball or softball practices/games. The District noted that all coaching staff are required to hold current certifications in First Aid, CPR, and AED use, as well as be familiar with the District's concussion protocol.

Publicity

The Complainant alleged that as of 2016, most (if not all) of the varsity football games and some of the boys' ice hockey and boys' and girls' basketball games are televised. The Complainant also alleged that press coverage of boys' and girls' games in local newspapers and online is "not equivalent." He alleged that the Athletic Director/coaches do not "call in" scores or send articles to the local media for girls' teams as often as they do for the boys' teams. The Complainant further alleged that the baseball and football teams usually have announcers, whereas the softball team never has an announcer.

The District informed OCR that the Athletic Director is responsible for the oversight of publicity for all teams and sporting events. The District stated that it provides daily announcements in the District's schools of upcoming games and recent results; and that it also maintains a web-based scheduling portal that provides current information on all teams and competitions. The District stated that athletic teams are also featured in two local newspapers, which publish schedules and articles covering various teams and competitions. According to the District, varsity coaches are responsible for reporting results and highlights to the Athletic Director and both local newspapers. The District further stated that the Athletic Director uses the Twitter handle @LeomAthletics to tweet competition schedules, results, and photographs.

The Athletic Director told OCR that the School recently purchased a hands-free "Hudl" camera, which automatically records games and uploads them to the School's Athletics page on YouTube. He stated that in the last two years, a local media company started broadcasting games live on its Facebook page; he noted that the coverage has been roughly proportionate between boys' and girls' sports, with slightly more coverage of boys' sports because they have had more playoff games. He also noted that the local access channel will broadcast some games,

including softball games. In addition, he stated that a local newspaper has published stories on athletes from every team during the 2021-2022 school year.

Analysis

Based on its investigation to date, OCR has identified preliminary concerns.

First, the evidence reviewed to date raises concerns as to whether the District has been effectively accommodating the interests and abilities of its female students in its interscholastic athletics program. Information provided by the District shows significant disparities in participation rates for the 2014-2015 and 2015-2016 school years; and publicly available data indicate continuing disparities for more recent years. In addition, the information provided to date is not sufficient to show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of female students; or to demonstrate that the interests and abilities of female athletes have been fully and effectively accommodated by the present program.

Second, evidence reviewed to date raises concerns as to whether the District has been providing an equal opportunity for female athletes in the following areas of its athletic program: equipment and supplies; scheduling of games and practice times; travel; opportunity for coaching; assignment and compensation of coaches; locker rooms and practice and competitive facilities; medical and training facilities and services; and publicity. In addition, information provided to date indicates that the District may not be comprehensively monitoring all funding of its athletic programs (including income provided by outside sources, e.g., booster clubs) to ensure equivalent benefits and services to both sexes regardless of the funding sources.

ALLEGATION 3

Legal Standards

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: “Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”

At the time of the incidents in this case, the Title IX regulation included a requirement under 34 C.F.R. § 106.8(b) for recipients to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. In response to a complaint of sex discrimination, a recipient must take prompt and equitable responsive action. OCR evaluates on a case-by-case basis whether the resolution of a sex discrimination complaint is prompt and equitable.

District reported, as an example, that the Athletic Department purchased a new pitching machine for the softball program in May 2016. The District reported that the Superintendent had also been leading a major capital campaign to construct a new athletic complex on the School's campus and that, in October 2016, the city council had finally approved the project, which includes plans for a new softball field. The District asserted that, "[t]o the extent that [the Complainant] felt the facilities or amenities at Lassie League Fields, or the maintenance of those fields by the city, were insufficient, his concerns will likely be resolved once the new softball facilities are completed."

The District provided OCR with a copy of its grievance procedures (which are also posted on the District's website) for processing complaints of discrimination based on sex. The procedures include instructions on how to report or file a complaint of discrimination and detail how the District will respond to such reports/complaints. The procedures note that individuals reporting discrimination are encouraged to file complaints using the District's reporting form but note that oral reports will be considered as well. The procedures designate the District's Director of Human Resources (i.e., the Title IX Coordinator) as the individual responsible for receiving reports or complaints of sex discrimination and overseeing the investigative process.

Analysis

Based on the evidence reviewed to date, OCR has preliminary concerns that the District did not respond appropriately to the Complainant's reports of alleged sex discrimination. It is undisputed that in XXXX, the Complainant reported, in conversation and by email, allegations of sex discrimination with respect to the District's athletic program to various District administrators, including its Title IX Coordinator. The evidence suggests that while the District reviewed data relating to at least some of his concerns and took some actions in response, the District did not specifically investigate and respond to his allegations under its grievance procedures.

CONCLUSION

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/ Michelle Kalka _____

Michelle Kalka
Compliance Team Leader

Enclosure

cc: Catherine L. Lyons, Esq. (by email: cat@lyonsandrogers.com)