



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

March 3, 2020

Dr. Robert A. Tremblay, Superintendent  
Framingham Public Schools

By email: [rtremblay@framingham.k12.ma.us](mailto:rtremblay@framingham.k12.ma.us)

Re: Complaint No. 01-18-1113  
Framingham Public Schools

Dear Dr. Tremblay:

This letter is to inform you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Framingham Public Schools (District). As explained 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).

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 Department. Because the District receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

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, as required by 34 C.F.R. § 106.41(a) and (c)(1).
2. Whether the District denies female athletes equal opportunities with respect to the following:
  - a. The provision of equipment and supplies, as required by 34 C.F.R. § 106.41(a) and (c)(2).
  - b. Scheduling of games and practice time, as required by 34 C.F.R. § 106.41(a) and (c)(3).
  - c. Travel and per diem allowance, as required by 34 C.F.R. § 106.41(a) and (c)(4).
  - d. Assignment and compensation of coaches, as required by 34 C.F.R. § 106.41(a) and (c)(6).
  - e. Provision of locker rooms, practice and competitive facilities, as required by 34 C.F.R. § 106.41(a) and (c)(7).
  - f. Publicity, as required by 34 C.F.R. § 106.41(a) and (c)(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.*

3. Whether the District denies female athletes equal opportunities with respect to the use of booster club funds, in violation of 34 C.F.R. § 106.41(a) and (c).

During the investigation, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant; and reviewed publicly available information concerning the District's interscholastic athletics program.

### **Legal Standard**

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.

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.<sup>1</sup> 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.

### **Allegation 1**

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, OCR uses the three-part test set forth in the Policy Interpretation. The three-part test provides the following three compliance options:

- 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

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<sup>1</sup> 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."

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.

The District informed OCR that, during the 2017-2018 school year, the student body at Framingham High School (School) was evenly split between male (1,069) and female (1,070) students. The School’s interscholastic sports teams compete at the Division One level of the Massachusetts Interscholastic Athletic Association (MIAA). Pursuant to MIAA rules, District students not enrolled at the School are generally not permitted to participate on the School’s interscholastic athletic teams.<sup>2</sup>

The District informed OCR that, as of the 2017-2018 school year,<sup>3</sup> the School offered the following interscholastic athletic teams:

<b><u>Boys’ Varsity</u></b>	<b><u>Girls’ Varsity</u></b>	<b><u>Co-ed<sup>4</sup> Varsity</u></b>
Baseball	Softball	Alpine Skiing
Basketball	Basketball	Football
Cross Country	Cross Country	Golf
Ice Hockey	Ice Hockey	Gymnastics
Indoor Track	Indoor Track	Field Hockey
Lacrosse	Lacrosse	Dance <sup>6</sup>
Outdoor Track	Outdoor Track	Wrestling
Soccer	Soccer	
Swimming & Diving	Swimming	
Tennis	Tennis	
Volleyball	Volleyball	
	Cheerleading <sup>5</sup>	

<sup>2</sup> If the District anticipates that it will not be able to fill a sub-varsity level team solely with students enrolled at the School, it may submit a waiver request to the MIAA to allow middle school students to participate on that team.

<sup>3</sup> OCR last received data regarding the sports offered by the School during the 2017-2018 school year.

<sup>4</sup> The District informed OCR that the sports in this column were co-ed. For the 2017-2018 school year, the varsity alpine ski team roster lists 10 boys and 6 girls; the varsity football roster lists 35 boys and 0 girls; the varsity golf roster lists 20 boys and 0 girls; the varsity field hockey roster lists 2 boys and 17 girls; the varsity gymnastics roster lists 1 boy and 17 girls; and the varsity wrestling roster lists 21 boys and 2 girls. These figures exclude team managers who are also listed on the rosters. OCR notes that the District provided rosters titled “Boys Varsity Football” and “Boys Varsity Golf.” OCR has not made any findings regarding the extent to which the District’s co-ed teams provide equal athletic opportunities to male and female students with sufficient interest and ability to participate on the teams.

<sup>5</sup> Because the District requested a voluntary resolution, OCR did not undertake the analysis with regard to whether the School’s cheerleading and dance teams can be counted as athletic activities for the purpose of Title IX

<b><u>Boys' Junior Varsity</u></b>	<b><u>Girls' Junior Varsity</u></b>	<b><u>Co-ed Junior Varsity</u></b>
Baseball	Softball	Field Hockey
Basketball	Basketball	Football
Ice Hockey	Ice Hockey	Wrestling
Lacrosse	Lacrosse	
Soccer	Soccer	
Volleyball	Volleyball	
	Cheerleading	
<b><u>Boys' Freshman</u></b>	<b><u>Girls' Freshman</u></b>	<b><u>Co-ed Freshman</u></b>
Baseball	Softball	Wrestling
Basketball	Basketball	Football
Ice Hockey	Ice Hockey	
Lacrosse	Lacrosse	
Soccer	Soccer	
Volleyball	Volleyball	

The District informed OCR that, excluding the cheerleading and dance teams, 743 male and 500 female athletes participated in the School’s interscholastic sports teams during the 2017-2018 school year. The District provided rosters for some, but not all, of the teams noted above. It noted that the School had recently added skiing as an interscholastic sport, assumed responsibility for boys’ and girls’ middle school basketball, and planned to add a unified basketball team starting in the fall of 2018.<sup>6</sup> The District informed OCR that it “currently ha[s] no written or advertised policy to determine how and whether new teams will be started” and “no surveys or assessments which have been done to determine new teams” because it feels that its interscholastic sports teams are “currently well balanced” and because it had received “no petitions . . . to begin new teams from parents.” The District’s Athletic Director informed OCR that he serves “on the MIAA Ice Hockey Committee and [is] hosting a meeting . . . with Women’s Coaches and fellow AD’s to come up with solutions to try and grow the Women’s game.”

In contrast, the Complainant informed OCR that the District had recently eliminated a girls’ field hockey team due to a lack of adequate funding and coaching staff, despite the fact that “the girls that showed up for tryouts exceeded three teams worth of players.” He also provided an email dated August 28, 2018 from the Athletic Director to a parent stating that “Field Hockey hasn’t had the number of girls it requires to sustain a freshman team and the Coach who has run the program for many years did not indicate any need for it until tryouts were beginning” and thus the District “didn’t budget for a freshman coach,” but when he was made aware that there was sufficient interest, he “invited the coach to meet with [him] and . . . try to be creative and do what [he] could to help.”

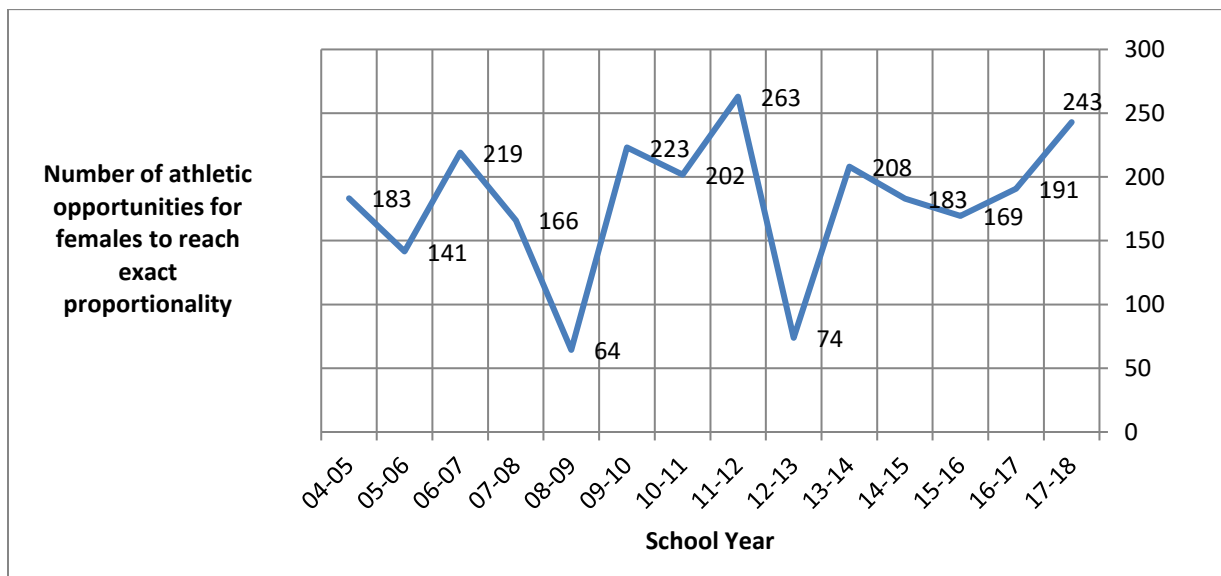
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compliance. See Dear Colleague Letter (September 17, 2008) at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.pdf> for guidance on this analysis.

<sup>6</sup> The District has not provided OCR any additional information regarding its unified basketball team or any middle school athletic teams.

The Complainant also provided OCR a copy of a letter from the varsity girls’ ice hockey coach stating that “on days [when the District] had both varsity and JV games (at least twice), each team had 11 or 12 players,” which was “far lower than a normal hockey team and resulted in the players becoming “fatigued from over play.” The coach noted that if he “had a deeper bench of qualified players this would have relieved the fatigue issue,” but girls with sufficient interest and ability to compete on the varsity team “had to skate on club teams” instead due to a lack of open varsity roster slots on the District’s team. The Complainant also informed OCR that “[w]ith injuries or other reasons, the girl’s [sic] varsity [ice hockey] team has fielded as few as 9 players . . . and at times had no goalie” during the 2017-2018 school year.

OCR reviewed publicly available data<sup>7</sup> regarding the District’s interscholastic athletic participation opportunities and the School’s enrollment from the 2004-05 school year through the 2017-2018 school year, as illustrated below:



As noted above, the District may satisfy the first part of the three-part test by providing interscholastic level participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments. Because the School’s student body was evenly split between girls and boys during the 2017-2018 school year, the District would need to provide the same number of interscholastic athletic opportunities to the School’s male and female students to achieve exact proportionality. Because compliance with the first part of the three-part test requires substantial, not exact, proportionality, OCR determines whether the District could reduce the size of the disparity in interscholastic athletic opportunities offered to boys and girls by fielding at least one additional team consisting of athletes of the underrepresented sex. The District informed OCR that 243 more male athletes participated on the School’s interscholastic athletic teams than female athletes during the 2017-2018 school year, not including the District’s cheerleading and dance teams. Consequently, the District did not provide substantially proportionate interscholastic athletic opportunities to the School’s female

<sup>7</sup> See [http://www.miaa.net/contentm/easy\\_pages/view.php?sid=38&page\\_id=137](http://www.miaa.net/contentm/easy_pages/view.php?sid=38&page_id=137); <http://profiles.doe.mass.edu/profiles/student.aspx?orgcode=01000515&orgtypecode=6&fycode=2018>.

students during that school year because the disparity of 243 students is a sufficient number for the District to field several additional girls' teams.<sup>8</sup>

As noted above, the District may satisfy the second and third parts of the three-part test by showing a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of the underrepresented sex; or demonstrating that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program. The District did not submit any evidence demonstrating that it has satisfied the second or third parts.

### **Allegation 2a**

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 equipment and supplies; and
- 5) The availability of equipment and supplies.

The Complainant alleged that the District's varsity girls' ice hockey players have nine-year-old jerseys and have to share their jerseys with the junior varsity players, whereas the boys' ice hockey players have at least four sets of jerseys that are less than three years old. He also alleged that the boys' ice hockey players and coaches received new, custom embroidered apparel that the girls' ice hockey players and coaches have not received. He provided an email dated January 8, 2019 from the varsity girls' ice hockey coach in which she referenced numerous disparities between the equipment and supplies used by the girls' and boys' ice hockey teams. She stated:

[A] lot of people think the boys [sic] program gets "extra" or "more" simply because they have more (i.e. gloves, team bags, etc [sic]) but the reality is, they have a group of parents in their program that help with fundraising and they do a very good job – they always have. . . . This is something the girls [sic] program has ALWAYS lacked in, until this year. I will not lie to you – our bank account was at \$0 when I took over.

However, the coach concluded that these disparities are "not a Title 9 issue."<sup>9</sup>

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<sup>8</sup> The disparity would be 131 athletes even if OCR were to determine that the District's cheerleading and dance teams qualify as sports for purposes of Title IX.

<sup>9</sup> OCR did not conduct interviews to determine whether District staff may erroneously believe that disparities in the provision of equipment and supplies to male and female athletes resulting from disparities in private fundraising for those athletes do not implicate Title IX.

The Complainant also informed OCR that the District had “purchased several thousand dollars of baseballs with the Bay State Conference logo,” but had not purchased any softballs for the girls’ softball team.

The District informed OCR that it has developed a form for teams to request new equipment or supplies, and it noted that all teams receive new uniforms for all of their athletes every five years. In an email that the District sent to the Complainant on January 3, 2018, it noted that “[i]n conjunction with the [Framingham High School] Foundation [FHSF] and the Girls Hockey fundraising account, the Athletic Department has purchased new socks and jerseys this year for the Girls [sic] Team with a total cost of over \$4,000.00,” whereas “[t]o date, the Boys [sic] Team has been given no funds from the [FHSF] or Athletic Department for equipment.” The District has not provided OCR with any additional information regarding the equipment and supplies utilized by its interscholastic athletic teams.

### **Allegation 2b**

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.

The Complainant informed OCR that the School’s boys’ varsity ice hockey team has taken overnight trips to Martha’s Vineyard and Cape Cod to compete in tournaments, whereas the girls’ varsity ice hockey team has not. He also alleged that the boys’ ice hockey teams enjoy more practice time, games, and scrimmages than the girls’ teams during the competitive season. He noted that the District sometimes schedules games for the girls’ varsity and junior varsity ice hockey teams at the same time, and since multiple girls participate on both teams, the junior varsity team is often forced to cancel its games due to a lack of available players. He noted that this does not occur for the boys’ ice hockey teams. He also alleged that when the District schedules girls’ softball and boys’ baseball games at the same time, it often removes umpires from the softball games to officiate the baseball games if the umpire who had been assigned to those games does not show up. The District’s bus driver would then fill in as the umpire for the softball games.

The District informed OCR that the MIAA determines the start date for each interscholastic athletic team’s competitive season, although the School’s football team attended a two-week camp prior to the start of its competitive season during the 2017-2018 school year. Once the competitive season begins, each team’s coach schedules practices, scrimmages, and games as he or she sees fit to meet the needs of the team. The District noted that the football team typically plays its games on Friday nights. It informed OCR that although the boys’ varsity ice hockey team plays in “voluntary non-league” “in season tournaments” and in “an out of town

scrimmage” whereas the girls’ varsity ice hockey team does not, “[t]he [g]irls [sic] team was not denied the opportunity to seek” out these opportunities, and its “coach simply chose not to do it.”<sup>10</sup> The Complainant alleged that the girls’ varsity ice hockey team did not participate in these competitions because it “ha[d] no funds to attend th[ese] events.” He also alleged that the boys’ junior varsity ice hockey team “play[ed] virtually double” the number of games as the girls’ junior varsity ice hockey team during the 2017-2018 school year. The District has not provided OCR any additional information regarding the number or time of day of competitions for each of its teams.<sup>11</sup>

The District informed OCR that, as of April 17, 2018, the School’s field hockey, boys’ soccer, cheerleading, dance, gymnastics, boys’ ice hockey, and wrestling teams had qualified for postseason MIAA competitions during the 2017-2018 school year, and each of these teams participated in the postseason competition.

The District also informed OCR that, between August and November, the Phil Read Turf Field is used by the field hockey team from 2-4 pm and by the football team from 4-6 pm, and between March and June, that field is used by the girls’ lacrosse team from 2-4 pm and by the boys’ lacrosse team from 4-6 pm. The District noted that the boys’ and girls’ basketball teams alternate using the School’s Front Gym from 2-5 pm and from 5-8 pm between November and March. The District also noted that the City of Framingham’s Loring Arena is shared equally by boys’ and girls’ ice hockey teams three hours a day from November to March.<sup>12</sup> It stated that the Winch Park Field is shared by the boys’ and girls’ soccer teams from 2-5 pm August through November. The District informed OCR that its wrestling team uses the School’s “Back/Back” Gym from 3-6 pm each day. The District has not provided OCR any additional information regarding the frequency or time of day of practices for each of its interscholastic athletic teams.

### **Allegation 2c**

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.

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<sup>10</sup> OCR did not conduct interviews to determine whether District employees may erroneously believe that disparities with respect to competitive opportunities resulting from disparities in whether a particular coach seeks out such opportunities do not implicate Title IX.

<sup>11</sup> OCR notes that information regarding the competitive schedule for each of the School’s interscholastic athletic teams is available at <https://framinghamhs.bigteams.com>. Although the District has not directed OCR to this website or verified the accuracy of its contents, the website does corroborate the Complainant’s allegation regarding the number of games played by the boys’ and girls’ junior varsity ice hockey teams.

<sup>12</sup> The District informed OCR that the schedule for the Loring Arena was “assigned by Arena Staff.”



The Complainant informed OCR that some of the girls' junior varsity ice hockey team's games had been cancelled due to the lack of bus transportation.

The District informed OCR that "every team rides in the exact same style vehicle," "yellow buses," "that [are] provided by Durham Transportation." It noted that the boys' varsity ice hockey team "stayed overnight in a hotel in Falmouth<sup>13</sup> to play a scrimmage game" during the 2017-2018 school year, but that was not funded by the District.<sup>14</sup> The District asserted that its dance team participated in an overnight trip during the 2017-2018 school year that "was paid for by a combination of their own fundraising and the FHSF," but none of the School's other interscholastic athletic teams had participated in an overnight trip that school year. The District informed OCR that it does not provide a per diem allowance to any student. The District did not provide OCR any details regarding the housing furnished to athletes who participated in overnight trips, the length of stay before and after competitive events, or the dining arrangements for the District's male and female athletes.

### **Allegation 2d**

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;

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<sup>13</sup> The Complainant provided OCR an email he received from the District on January 3, 2018, which states that the scrimmage was held in Marlborough, Massachusetts.

<sup>14</sup> OCR did not determine whether District employees may erroneously believe that disparities in the ability of female and male athletes to take overnight trips resulting from disparities in private fundraising for those athletes do not implicate Title IX.

- 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.

The Complainant alleged that the District's boys' ice hockey team has a greater number of coaches and other staff assigned to it than are assigned to the girls' ice hockey team, and the boys' ice hockey coaches are provided supplemental compensation from the booster club and alumni whereas the girls' coaches are not. The Complainant also alleged a disparity in the number of coaches and support staff assigned to the School's boys' and girls' ice hockey teams and a disparity in the compensation provided to the coaches of the boys' and girls' ice hockey teams.

The District informed OCR that the number of coaches assigned to its interscholastic athletic teams is "determined in contract negotiations with the [D]istrict," and the coaches' pay "is based on the number of students each program would reasonably expect on an annual basis." It also noted that each coach is able to hire volunteer assistant coaches if he or she feels it is necessary to do so. The District informed OCR that the School's girls' teams (excluding the cheerleading and dance teams) are assigned an average of 1.2 coaches and its boys' teams are assigned an average of 1.4 coaches.

In addition to coaches, the District informed OCR that its full-time athletic staff consists of an Athletic Director (who reports to the School's principal), Assistant Athletic Director (who reports to the Athletic Director), Office Manager, Athletic Trainer, Strength and Conditioning Coach, and Academic Support Program Coordinator, who all work to meet the needs of every School interscholastic athletic team. It noted that the District employs "some part time ticket takers, ticket sellers, and scorekeepers" to "facilitate nearly 1800 athletic events for over 1500 students."

The District provided OCR information regarding the stipends it provided to each of the School's interscholastic athletic coaches during the 2017-2018 school year. For those teams that the District provided OCR a roster for that school year (excluding the School's cheerleading and dance teams), the District devoted a total of \$119,560 in stipend compensation to coaches for coaching female athletes (or \$283 per female athlete) and a total of \$138,940 in stipend compensation to coaches for coaching male athletes (or \$278 per male athlete).

The District also provided OCR the number of years of coaching experience for all coaches who coached one of the School's interscholastic athletic teams during the 2017-2018 school year.<sup>15</sup> For those teams that the District provided OCR a roster for that school year (excluding the School's cheerleading and dance teams), the District's male athletes were coached by individuals with an average of 3.4 years of coaching experience and its female athletes were coached by individuals with an average of 3.0 years of coaching experience.

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<sup>15</sup> It is not clear whether this data indicates the number of years of coaching experience for that particular team, in that particular sport, for any District team, or for non-District teams as well.

### **Allegation 2e**

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.

The Complainant informed OCR that the School's boys' ice hockey team has access to higher quality locker rooms and restrooms than those utilized by the girls' ice hockey team. He also noted that the School's girls' softball team was forced to practice at a field with no available restroom and play games at a field that was "in complete disrepair" and that lacked a scoreboard. The Complainant alleged that the School's boys' baseball team did not face these obstacles.

The District informed OCR that the Phil Read Turf Field is used by the School's band as well as its field hockey, football, and lacrosse teams; Bowditch Field is used by the School's varsity football team; the School's Front Gym is used by the School's basketball teams; the Loring Arena is used by the School's ice hockey teams; the Winch Park Field is used by the School's soccer teams;<sup>16</sup> the Reggie Lewis Center and the School's Back Gym are used by the School's indoor track teams; the School's "Back/Back" Gym is used by the School's wrestling teams; the Framingham Country Club and Millwood Golf Course are used by the School's golf team; the Galvani Complex (otherwise known as the Old Museum Field) is used by the School's freshman lacrosse teams; Shen's Gymnastics Academy in Holliston is used by the School's gymnastics team; the Keefe Tech Pool is used by the School's swim teams; and Long's field is used by the School's junior varsity baseball and freshman football teams. The District noted that the School's ice hockey and basketball teams also use the same practice facilities without identifying the shared facility. The District also noted that any team may use King Field "as an emergency field" if the need arises, and the School's "Wellness Center" "is shared equally by [each] team and they are all granted whatever workout times they choose to schedule." The District informed OCR that all teams have access to a film room with a projector and share storage space in common storage areas.

The District informed OCR that the School's boys' and girls' basketball and volleyball teams each have their own locker rooms at the School. It noted that the School's wrestling team has a locker room at the School in the winter that is used as storage for the boys' and girls' track teams at other times of the year. It also noted that the School's football team has its own locker room at Bowditch Field, and other teams that practice and compete off campus, such as the School's ice hockey teams, "are given locker facilities by the vendor" that "are equal in every way." The District asserted that none of the School's other interscholastic athletic teams require the use of a

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<sup>16</sup> The District noted that the School's boys' and girls' soccer teams have two practice fields that are side by side, but they play games on the same competition field.

locker room, but any student may change clothes in the School’s physical education locker rooms.

The District provided OCR photographs of some, but not all, of the athletics facilities referenced above. The District has not provided photographs of the specific facilities about which the Complainant raised concerns or provided any additional information regarding the provision of locker rooms, practice, and competitive facilities to its male and female athletes.

### **Allegation 2f**

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.

The Complainant alleged that “[t]he amount of funds spent on professional photographers, websites, broadcasting etc [sic] is completely one-sided” in favor of boys’ interscholastic athletic teams in the District. He also alleged that School’s boys’ ice hockey team, unlike its girls’ ice hockey team, “has dedicated websites for donations and charity events (golf tournaments)” and “live stream and play by play of the boy’s [sic] hockey games.” OCR did not request data on this allegation because the Complainant raised it after OCR opened this complaint for investigation.

### **Allegation 3**

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. If booster clubs provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the institution shall take action to ensure that benefits and services are equivalent for both sexes.

The Complainant informed OCR that the School’s boys’ ice hockey teams enjoy greater benefits than the girls’ ice hockey teams in part because the boys’ teams are supported by the “flyer fund,” a “100% parent-driven” booster club that has a dedicated website for donations and runs charity events such as golf tournaments.

As noted above, the Complainant provided an email dated January 8, 2019 from the varsity girls’ ice hockey coach in which she explained that the boys’ team benefits from strong parent fundraising, which the girls’ team traditionally lacked.

The District informed OCR that it has “no written policies, procedures, or criteria to determine expenditures, funds spent, or benefits to both boys’ and girls’ athletic teams as this is all done as equitably as possible.” It informed OCR that the District does not charge athletes or their families a user fee to participate on any interscholastic athletic team and the FHSF donates to these teams upon request from coaches or athletic department staff. The District noted that the School’s Parent Teacher Booster Organization had donated to teams in the past as well. The District reported that “[a]ll teams are allowed to independently raise money through ancillary fundraisers” and “this money gets dedicated to the team that raised it.” The District asserted that the boys’ ice hockey team had recently raised money through parents to purchase new jerseys, and the athletic department, girls’ hockey boosters, and the FHSF had subsequently purchased new jerseys for the girls’ ice hockey team. The District informed OCR that booster clubs do not fund any team banquets.

The District provided OCR a copy of FHSF’s 2016-2017 and 2017-2018 Year End Reports, which listed a number of approved FHSF grants to the District’s athletics programs during fiscal years 2016-2017 and 2017-2018.<sup>17</sup> The District provided OCR a copy of its reconciliation reports for each interscholastic athletic team, indicating funds received and disbursed from each team’s Student Activity Account between January 1, 2018 and May 17, 2018 and the account balances on those two dates. The District also provided OCR copies of the District’s athletics department expense reports for fiscal years 2016 through 2018, but the reports do not specify the team(s) that benefited from each disbursement.

### **Conclusion**

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM),<sup>18</sup> 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 the allegations listed above. 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. The Complainant 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.

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<sup>17</sup> The 2016-2017 Year End Report states that FHSF “look[s] to [School] Administration to ensure all appropriate balances of FHSF funds and other sources” are split “between gendered organizations per Title 9.”

<sup>18</sup> The CPM is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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  
Compliance Team Leader

Enclosure

cc: Philip B. Benjamin  
By email: [pbenjamin@bwblawyers.com](mailto:pbenjamin@bwblawyers.com)