



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

October 8, 2020

Superintendent Lori Duerr  
By email: lduerr@falmouth.k12.ma.us

Re: Complaint No. 01-18-1164  
Falmouth Public Schools

Dear Superintendent Duerr:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Falmouth Public Schools (Falmouth). The Complainant alleged that the District discriminates against female students on the basis of sex. Specifically, the Complainant alleged that the District: denies female athletes equal opportunities to participate in its interscholastic athletics program (Allegation 1); denies female athletes equal opportunities with respect to: scheduling of games and practice time, opportunity for coaching, assignment and compensation of coaches, and provision of locker rooms, practice and competitive facilities (Allegation 2); and denies female athletes equal opportunities with respect to the use of booster club funds (Allegation 3). 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).

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) 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.

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, 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. Scheduling of games and practice time, as required by 34 C.F.R. § 106.41(a) and (c)(3).
  - b. Opportunity for coaching, as required by 34 C.F.R. § 106.41(a) and (c)(5).
  - c. Assignment and compensation of coaches, as required by 34 C.F.R. § 106.41(a) and (c)(6).

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

- d. Provision of locker rooms, practice and competitive facilities, as required by 34 C.F.R. § 106.41(a) and (c)(7).
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).

### **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.

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. 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.

When determining whether a school district is in compliance with Title IX with respect to the scheduling of games and practice time, *see* 34 C.F.R. § 106.41(c)(3), 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 season of sport and the length of season may also be a factor to be assessed depending upon the specific fact situation.

When determining whether a school district is in compliance with Title IX with respect to the availability of coaches, *see* 34 C.F.R. § 106.41(c)(5), OCR considers 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.

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.

When determining whether a school district is in compliance with Title IX with respect to the provision of locker rooms, practice, and competitive facilities, *see* 34 C.F.R. § 106.41(c)(7), 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.

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 their 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.

### **Summary of Preliminary Investigation**

#### *Athletic Opportunities*

The District informed OCR that, “[a]s of June 25, 2018, the student body at Falmouth High School [School] had 428 female students and 390 male students.” Therefore, approximately 52%

of the student population was female and 48% was male as of that date.<sup>2</sup> With a few exceptions,<sup>3</sup> the School's interscholastic sports teams compete in the Atlantic Coast League (ACL) 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>4</sup>

The District informed OCR that, as of the 2017-2018 school year,<sup>5</sup> the School offered the following interscholastic athletic teams:<sup>6</sup>

<b>Co-ed Varsity</b>		
Sailing		
<b>Boys' Varsity</b>	<b>Boys' Junior Varsity (JV)</b>	<b>Boys' Freshman</b>
Football	Football	Football
Basketball	Basketball	Basketball
Baseball	Baseball	Baseball
Soccer	Soccer	Soccer
Ice Hockey	Ice Hockey	
Lacrosse	Lacrosse	
Golf	Golf	
Cross Country		
Indoor Track		
Outdoor Track		
Tennis		

<sup>2</sup> In contrast, the District reported to the Massachusetts Department of Elementary and Secondary Education (DESE) that 401 male and 440 female students were enrolled at the School during the 2017-2018 school year, resulting in the same 48% to 52% division in the student body. See

<http://profiles.doe.mass.edu/profiles/student.aspx?orgcode=00960505&orgtypecode=6&fycode=2018>.

<sup>3</sup> The District's athletics website states that the girls' golf team competes in the Mass Bay Golf League; the gymnastics team competes in the Cranberry Gymnastics League – South; the girls' ice hockey team competes in the Southeastern Massachusetts Girls Hockey League – Coastal; and the co-ed sailing team competes in the New England Schools Sailing Association. See <https://www.falmouth.k12.ma.us/domain/197>.

<sup>4</sup> See [http://www.miaa.net/gen/miaa\\_generated\\_bin/documents/basic\\_module/MIAAHandbook1719.pdf#page=52](http://www.miaa.net/gen/miaa_generated_bin/documents/basic_module/MIAAHandbook1719.pdf#page=52). If the District anticipates that it will not be able to fill a sub-varsity level team – or a varsity team if no sub-varsity level teams are offered – 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. See [http://miaa.net/gen/miaa\\_generated\\_bin/documents/basic\\_module/MiddleLevelWaiverPolicies.pdf#page=2](http://miaa.net/gen/miaa_generated_bin/documents/basic_module/MiddleLevelWaiverPolicies.pdf#page=2). The District informed OCR that “Grade 8 students from the Lawrence School are allowed to participate in a few specific programs with a Middle Level waiver approved by the MIAA.” The rosters that the District provided for the 2017-2018 school year indicate that 21 eighth grade students participated on the boys' freshman football team, 5 eighth grade students participated on the varsity girls' ice hockey team, and 6 eighth grade students participated on the JV girls' softball team.

<sup>5</sup> OCR received data regarding the sports offered by the School during the 2017-2018 school year. Accordingly, OCR is not addressing any changes that may have been made to the School's athletic offerings during subsequent school years.

<sup>6</sup> The District also provided OCR certain information regarding the School's cheerleading team, but it did not include this team in its list of the District's interscholastic athletic programs. Cheerleading may be a “sport” for the purposes of Title IX, depending upon the activity's 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 team or analyze information provided by the District regarding this team.

<b>Co-ed Varsity</b>		
<b><u>Girls' Varsity</u></b>	<b><u>Girls' JV</u></b>	<b><u>Girls' Freshman</u></b>
Volleyball	Volleyball	Volleyball
Field Hockey	Field Hockey	
Soccer	Soccer	
Basketball	Basketball	
Softball	Softball	
Lacrosse	Lacrosse	
Cross Country		
Ice Hockey		
Indoor Track		
Gymnastics		
Outdoor Track		
Tennis		
Golf		

The District provided OCR with rosters for its interscholastic sports teams, which indicate that it provided a total of 819 interscholastic athletic opportunities during the 2017-2018 school year – 450 for boys and 369 for girls.

The District noted that, since 1995, five interscholastic athletics programs have been added to the School, four of which are for girls (varsity and JV lacrosse in 1998, varsity golf in 2001, varsity ice hockey in 2003, and varsity gymnastics in 2013),<sup>7</sup> and one of which is co-ed (varsity sailing (2001)). No new varsity or JV interscholastic athletics programs for boys were added during this period, and freshman-level sports for both sexes have been dropped or reinstated based on interest.<sup>8</sup> The District informed OCR that it adds interscholastic athletic programs “based on student interest, facilities, funding,” the “ability to schedule sufficient contests to complete a competitive schedule within a reasonable geographic area,” and the interscholastic athletic “programs offered by other schools in [the District’s] league.” In March 2017, the School circulated an athletic interest survey to its student body. Although the District asserted that the survey results “appear to support the conclusion that the District is in compliance with Title IX,” the results note, among other things, that 25% of the School’s students would be interested in participating on a freshman team that is not currently offered, and 33% reported that they would be interested in playing other interscholastic sports that are not offered at the School.

<sup>7</sup> The District’s website indicates that it has recently added unified basketball and track teams, both of which appear to be co-ed. See <https://www.falmouth.k12.ma.us/Page/3087>; <https://www.falmouth.k12.ma.us/Page/3110>. The District also reported to the MIAA that it eliminated a girls’ swim and dive program with 47 female participants in 2005. Compare [http://www.miaa.net/gen/miaa\\_generated\\_bin/documents/basic\\_module/Participation2005bySchool.pdf#page=35](http://www.miaa.net/gen/miaa_generated_bin/documents/basic_module/Participation2005bySchool.pdf#page=35) with [http://www.miaa.net/gen/miaa\\_generated\\_bin/documents/basic\\_module/Participation2006bySchool.pdf#page=36](http://www.miaa.net/gen/miaa_generated_bin/documents/basic_module/Participation2006bySchool.pdf#page=36).

<sup>8</sup> The Complainant provided OCR an email that she sent to the Principal and Athletic Director on September 8, 2015, in which she reported that the head girls’ volleyball coach informed her that the District “does not have a separate freshman team because there is no funding for this team,” and “girls are now being turned away from the [volleyball] program due to lack of funding.”

The Complainant informed OCR that the District “does not have a nondiscriminatory policy or published procedure for requesting the addition of sports or new teams, other than to discuss it with the Athletic Director,” who is “well-known to . . . reject[]” such requests by stating “that there are no funds for new programs or teams” without considering the “requirements of Title IX.” The Complainant asserted that the “District’s effort to determine interest of incoming freshman has traditionally been limited only to ‘Freshman Sign up’ in the spring for 8th grade students entering [the School] in the fall,” which is limited to the “existing programs” at the School.

The Complainant also informed OCR that the “District has been asked to create and fund additional opportunities for female athletes . . . through the establishment of funded female freshman teams and a [JV] girls’ ice hockey team,” but it had “continually denied these requests, citing lack of funds and lack of participants, yet recruitment and/or program development as incentives to participation are not employed by the District.” She provided a letter that she sent to the Chair of the Falmouth School Committee (Committee) on August 21, 2013, in which she asserted that the Athletic Director had informed her that approximately 28 to 30 girls “are required to be entering [the School] as hockey players before a JV team can be dedicated,” but girls were “leaving the sport because of the resulting increased numbers on the varsity team and lack of JV team availability.” The letter notes that “about 8 players” on the varsity team “get no . . . or very little game ice time,” and “[s]ome players are required to not dress for games at all because of maximum roster requirements.”<sup>9</sup> It also states that Falmouth Youth Hockey registrations by female players had increased from 78 during the 2010-2011 season (including 30 female players between the 19 and under and 14 and under age levels) to 117 during the 2012-2013 season (including 72 female players at the aforementioned age levels), and there were “at least 12 8th grade girl students playing with Falmouth Youth Hockey that could be available to participate on a . . . JV team.” The Complainant attached a newspaper article to the letter stating that the “MIAA requires at least 15 players to field” an ice hockey team, as well as another local girls’ JV ice hockey team’s schedule indicating that there were at least eight girls’ JV ice hockey teams available for local competition.

The District provided OCR Committee meeting minutes which note that the Athletic Director and the School’s former principal spoke to the Committee on August 27, 2013 and

provided the number of participants as well as the breakdown of boys and girls, MIAA [T]itle IX compliance framework and a breakdown of enrollment for 2010-11, 2011-12 and 2012-13. They discussed their support of a girls’ [JV] ice hockey team when there are enough girls to make a [JV] team without adverse effects to the girls’ varsity ice hockey team. [The former principal] reported there are proper procedures to be followed as well as the need to work within the approved budget when addressing the implementation of any new programs for students. [The Athletic Director] estimates, on the low side, \$10,000 to develop a

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<sup>9</sup> The MIAA permits “a maximum of 22 players to be dressed and on the bench” during ice hockey competitions. See, e.g., [http://miaa.net/gen/miaa\\_generated\\_bin/documents/basic\\_module/MIAAHandbook1315.pdf#page=74](http://miaa.net/gen/miaa_generated_bin/documents/basic_module/MIAAHandbook1315.pdf#page=74). The ice hockey team rosters provided by the District indicate that 23 boys participated on the boys’ varsity team during the 2016-2017 and 2017-2018 school years, and 28 and 26 girls, respectively, participated on the girls’ varsity team during those school years.



[JV] girls' ice hockey team to cover coaching, ice rental, transportation, officials, and equipment. [The Athletic Director] reported the possibility of scheduling additional JV games so long as they do not interfere with the varsity games.

At this meeting, three parents of female ice hockey players voiced support for the creation of a JV girls' ice hockey team for girls "who do not see much playing time on the varsity ice hockey team" "so the girls who have committed time do not lose interest in playing."

The Complainant provided OCR a letter that she sent to the Committee Chair on September 23, 2013, in which she again advocated for the formation of a JV girls' ice hockey team and noted that "there is sufficient ice time at Falmouth Ice Arena," "all games would be privately funded," and "the funds are available."

The Complainant provided OCR Committee meeting minutes dated September 24, 2013, which state that "there are not enough players to form a [JV girls' ice hockey] team," the District does "not meet the MIAA requirements for an eighth grade waiver," and "the budget for FY14 is set." The minutes state that the District's former superintendent "discussed the possibility for planning for a [JV] girls' ice hockey team during the FY15 budget process if the number(s) for participation are there; and if it is supported by the Athletic Director, hockey coach and principal." The minutes note that "a member of the . . . [C]ommittee was concerned that the [District] is vulnerable to violations with respect to title IX compliance," but "[o]ther members felt they did not have enough information to form an opinion." Three members of the public voiced their support for creation of a girls' JV ice hockey team and one Committee member moved "to proceed with the process to apply for a grade 8 waiver so the [D]istrict can implement a [JV] girls' ice hockey team," but the motion was defeated.

OCR reviewed publicly available data<sup>10</sup> regarding the District's interscholastic athletic participation opportunities and the School's enrollment from the 2004-2005 school year through the 2017-2018 school year. The public data differs to varying degrees from analogous data that the District provided to OCR for the 2010-2011 school year through the 2017-2018 school year and with individual team roster data that the District provided OCR for the 2016-2018 and 2017-2018 school years.<sup>11</sup> The chart below reflects the publicly available data prior to the 2010-2011 school year and the data provided by the District to OCR for subsequent school years. The chart

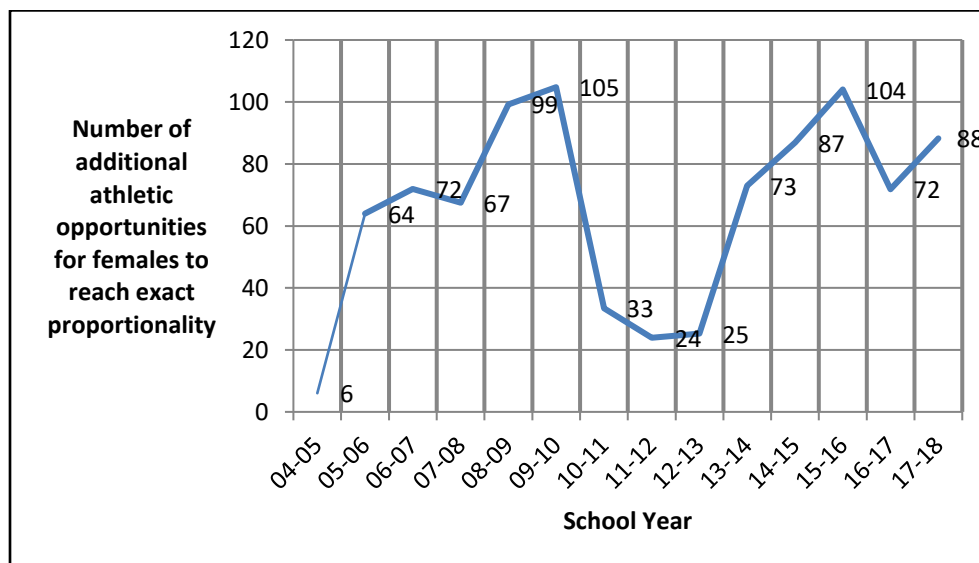
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<sup>10</sup> See [http://www.miaa.net/content/easy\\_pages/view.php?sid=38&page\\_id=137](http://www.miaa.net/content/easy_pages/view.php?sid=38&page_id=137); <http://profiles.doe.mass.edu/profiles/student.aspx?orgcode=00960505&orgtypecode=6&fycode=2019>. The athletes on the District's co-ed sailing team are not reported in the MIAA data, so the chart below does not reflect those athletic participation opportunities prior to the 2010-2011 school year.

<sup>11</sup> The differences between (1) the DESE enrollment data and the enrollment data provided by the District and (2) the total number of student-athletes reported by the District since 2010, the MIAA data, and the number of athletes reflected on the individual team rosters impact the analysis of athletic opportunities. For example, when using the DESE enrollment figures in conjunction with the MIAA data for the 2010-2011 through 2015-2016 school years and the individual roster data for the 2016-2017 and 2017-2018 school years, the District would have needed to provide a minimum of 61 additional athletic opportunities for females to reach exact proportionately (in the 2010-2011 school year) and a maximum of 125 additional athletic opportunities for females to reach exact proportionately (in the 2017-2018 school year). Because the District requested a voluntary resolution, OCR did not seek to reconcile these differences.



shows the number of additional athletic opportunities necessary for females to reach *exact* proportionality with males from the 2004-2005 school year through the 2017-2018 school year:



#### *Number of Regular Season Competitive Events Per Sport*

The Complainant alleged that the District’s “female teams . . . appear to have less [sic] competitive opportunities than the male teams.” In support thereof, she pointed to the 2017-2018 schedules for the boys’ and girls’ golf and ice hockey teams, which she alleges establish that they “do not have comparative schedules for competitive opportunities.”

The District provided OCR competition schedules for all of its interscholastic sports teams for the 2017-2018 school year.<sup>12</sup> These schedules indicate that the average female athlete participated in a slightly greater number of regular season competitions (both home and away) compared to the average male athlete.

#### *Number and Length of Practice Opportunities*

The District provided OCR practice schedules for all of its interscholastic sports teams for the 2017-2018 school year. These schedules indicate that, with the exception of days when athletes participated in a competitive event, almost all male and female athletes participated in daily practices, Monday through Friday, during the regular season. The exceptions are the girls’ varsity gymnastics and boys’ JV golf teams, which did not practice on Fridays, and the girls’ varsity cross country team, which also practiced on Saturdays.

During the 2017-2018 school year, the average female athlete participated in the same number of hours of practice each day; slightly less practice each week; and approximately ten fewer hours of practice total during the regular season as compared to the average male athlete. The District’s

<sup>12</sup> The District also provided OCR some, but not all, competition schedules for the 2016-2017 school year.

89 male football players began practice one week before all other fall sports teams were permitted to do so under MIAA regulations, as noted below.

*Time of Day Competitive Events Are Scheduled*

Based on the competition schedules provided by the District, OCR determined that, on average, female athletes' competitive events began slightly later than male athletes' competitive events during the 2017-2018 school year.

*Time of Day Practice Opportunities Are Scheduled*

Based on the practice schedules provided by the District, OCR determined that, on average, male athletes' practices began slightly earlier than female athletes' practices during the 2017-2018 school year. The typical weekday practice start time for teams was 3:00 PM, but the girls' varsity ice hockey team practiced after the boys' ice hockey teams at the Falmouth Ice Arena.

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

The District provided OCR competition schedules for all of its interscholastic sports teams for the 2017-2018 school year. These schedules indicate that the average female athlete participated in a slightly greater number of team preseason and postseason competitions, and the same number of individual postseason competitions (for those athletes participating in a sport providing for such individual competitions), as compared to the average male athlete.

*Season of Sport and Length of Season*

The District informed OCR that, during the 2017-2018 school year, the boys' and girls' varsity cross country teams, the girls' varsity and JV field hockey teams, the boys' varsity, JV, and freshman football teams, the boys' varsity and JV golf teams, the boys' and girls' varsity and JV soccer teams, the boys' freshman soccer team, and the girls' varsity, JV, and freshman volleyball teams practiced and competed in the fall; the boys' and girls' varsity and JV basketball teams, the boys' freshman basketball team, the girls' varsity gymnastics team; the boys' and girls' varsity indoor track teams, the boys' and girls' varsity ice hockey teams, and the boys' JV ice hockey team practiced and competed in the winter; and the boys' varsity, JV, and freshman baseball teams, the girls' varsity golf team, the boys' and girls' varsity and JV lacrosse teams, the co-ed varsity sailing team, the girls' varsity and JV softball teams, the boys' and girls' varsity tennis teams, and the boys' and girls' varsity outdoor track teams practiced and competed in the spring. The District informed OCR that, pursuant to MIAA regulations,<sup>13</sup> all but three fall sports teams began practicing on August 24, 2017;<sup>14</sup> all winter sports teams began practicing on November 27, 2017; and all spring sports teams began practicing on March 19, 2018.

The District provided OCR competition schedules for all of the aforementioned interscholastic sports teams for the 2017-2018 school year. These schedules indicate that the average female athlete participated in a slightly shorter regular season for competitions (the period between the

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<sup>13</sup> See [http://miaa.net/gen/miaa\\_generated\\_bin/documents/basic\\_module/MIAAHandbook1719.pdf#page=35](http://miaa.net/gen/miaa_generated_bin/documents/basic_module/MIAAHandbook1719.pdf#page=35).

<sup>14</sup> The District informed OCR that its football teams began practicing on August 18, 2017.

first and last regular season competition) and for practice (the period between the practice start date and the last regular season competition) as compared to the average male athlete.

### *Assignment of Coaches*

The Complainant alleged that there are more coaches for the District's boys' interscholastic athletics teams than there are for its girls' teams. She also alleged that many of the girls' coaches have multiple roles and are therefore unable to devote as much time to their coaching duties. For example, she explained that one of the girls' varsity ice hockey coaches is also the athletic trainer and has many duties. Additionally, the girls' varsity assistant coaches for lacrosse, volleyball, and field hockey also serve as the JV coaches for these sports. The Complainant also asserted that, "due to Booster Club benefits for certain male teams, coaches on the female side of the program likely spend more time than coaches on the male side of the program fundraising, making them less available to female than male student-athletes."

The District provided OCR a list of its interscholastic coaching assignments for the 2017-2018 school year.<sup>15</sup> It noted that "in March of 2017, the District committed funds earmarked for 3 additional coaches for female athletic teams." OCR determined that, on average during the 2017-2018 school year, there was a slightly greater athlete-to-coach ratio for male athletes as compared to female athletes. In terms of the duplication of coaching staff, OCR found that on both the boys' and girls' teams, coaches served multiple roles. Typically, an assistant varsity coach or coaches will serve as the head coach for the JV and/or freshman teams. Coaches on the following boys' teams served multiple roles: baseball; basketball; football;<sup>16</sup> lacrosse; and soccer. Coaches on the following girls' teams served multiple roles: basketball; field hockey; lacrosse; soccer; softball; and volleyball.

### *Compensation of Coaches*

The Complainant alleged that "[s]alaries paid to the District's high school coaches . . . significantly favor boys' teams," and "there are inequalities in the allocation of coach compensation among equivalent single gender teams for coaches." For example, the Complainant alleged that during the 2016-2017 school year, the District paid \$161,791 to the coaches of its boys' teams but only paid \$123,282 to the coaches of its girls' teams, even though the District had an equal number of single-sex teams that year. The Complainant also alleged that the compensation for equivalent coaching positions on single-sex teams is higher for coaches on boys' teams than it is for coaches on girls' teams.

The District provided OCR with a salary guide for its athletic program, which it noted was set by its contract with the Falmouth Educators' Association:

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<sup>15</sup> The District also provided OCR information regarding the interscholastic coaching assignments for some, but not all, interscholastic athletics teams during the 2016-2017 school year.

<sup>16</sup> The nature of the sport of football, including the number of participants needed to field a team, the rate of injury, and the rate of severe injury, often justifies the assignment of several assistant coaches.

Sports Teams	2016-2017			2017-2018		
	Step 1	Step 2	Step 3	Step 1	Step 2	Step 3
Football Head	\$7,632	\$8,522	\$9,405	\$7,804	\$8,714	\$9,617
Ice Hockey & Basketball Heads	\$6,532	\$7,222	\$7,905	\$6,704	\$7,414	\$8,117
Baseball, Soccer, Lacrosse, Field Hockey, Softball & Volleyball Heads	\$6,132	\$6,822	\$7,505	\$6,304	\$7,014	\$7,717
Track, Gymnastics, Cross Country Heads; Football Assistants	\$5,832	\$6,522	\$7,205	\$6,004	\$6,714	\$7,417
Tennis, Golf, Sailing Heads; Ice Hockey & Basketball Assistants	\$5,632	\$6,322	\$7,005	\$5,804	\$6,514	\$7,217
Baseball, Lacrosse, Soccer, Field Hockey, Softball, Track, Cross Country, Gymnastics, Sailing & Volleyball Assistants	\$5,332	\$6,022	\$6,705	\$5,504	\$6,214	\$6,917

The salary guide states that, “[i]n determining proper step placement, coaches shall receive full credit for previous coaching experience within the sport in Falmouth, regardless of the category classification of such experience.” It also notes that head coaches receive a “longevity incentive” of an additional \$100 after 5 years of service; \$150 after 10 years; \$200 after 15 years; and \$250 after 20 years, and “[i]n activities[] which have three or more Assistant Coaches, one individual will be designated as ‘First Assistant’ and will receive an additional stipend of \$100.” The District informed OCR that the “Athletic Director determined the step” placement for each coach “based on the experience of the coach.”

The District informed OCR that during the 2017-2018 school year it added positions and expanded funding for the coaching staff on the girls’ volleyball, ice hockey, indoor track, and golf teams. It provided coaching compensation data indicating that it provided less total stipend compensation to coaches for coaching female athletes as compared to male athletes, but more stipend compensation per female athlete coached than per male athlete coached. The District also provided OCR the number of years of coaching experience and the applicable step placement for all coaches who coached one of the School’s interscholastic athletic teams during the 2017-2018 school year.<sup>17</sup> This information indicates that the District’s male athletes were coached by individuals with a slightly greater average amount of coaching experience as compared to the District’s female athletes, but the average step placement for individuals who coached male and female athletes was the same.

### *Provision of Facilities*

The Complainant alleged that the “boys varsity baseball teams [sic] home game facility” has a “scoreboard, dugout[s], lights, spectator stands, restroom[s], and other benefits,” and another “facility that serves the boys’ baseball teams contains new dugout and . . . scoreboard facilities” that were purchased through a \$49,600.00 private donation, but the “girls’ varsity softball home

<sup>17</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.

game facility does not have” any of these amenities. The Complainant provided OCR a letter that she sent to the School’s Principal on June 1, 2016, detailing these disparities.

Similarly, the Complainant alleged that electricity and portable toilets were provided for boys’ baseball and football games, whereas comparable benefits were not provided for girls’ games. She also asserted that she

received an email from a parent of a varsity girl [ice] hockey player outlining . . . . that the Girls [sic] asked for a private larger locker room to be made available to them, which is not being used, for privacy and security and that request was denied. They currently have a full team in one room with 8 girls sharing the last two cubbies. If they use . . . the shared bathroom/shower area, whoever is in the adjoining locker room can enter from that space. This parent advised that one of the girls was in the stall with her sports bra and Jill shorts on when a grown man entered to use the urinal. It is also common knowledge that the girls either have to shower in bathing suits or do not shower at all. The boys['] varsity team enjoys its own spacious private locker room with private showers/bathroom that was built with booster club money and donations.

The District informed OCR that the athletic facilities at the School “are assigned and utilized equitably by . . . male and female athletic teams.” It provided OCR with a breakdown of how its athletic fields and other outdoor areas are used for games and practices:

- 8 Tennis Courts: shared equally by boys’ and girls’ tennis
- Field 1: girls’ field hockey and lacrosse
- Field 2: additional practice field for boys’ and girls’ soccer and lacrosse, and reserved area for javelin practice and competition
- Field 3: lighted field inside track used for varsity girls’ soccer and JV boys’ soccer
- Field 4: recently renovated varsity girls’ softball field
- Field 5: girls’ JV softball
- Field 6: varsity boys’ soccer and lacrosse
- Field 7: JV boys’ soccer and lacrosse

#### Off-Site Athletic Facilities:

- Lawrence School fields (2.7 miles from School): boys’ JV and freshman baseball
- Fuller Field (3 miles from School): boys’ varsity and JV football and varsity baseball
- Falmouth Ice Arena (3.5 miles from School): boys’ and girls’ ice hockey
- Multiple area golf courses (between 4.5 and 6.0 miles from School): boys’ and girls’ golf
- Flip Flop Gymnastics Center (7.5 miles from School): girls’ gymnastics
- Kingman Yacht Center (8.3 miles from School): co-ed sailing

The District did not provide OCR with information about where its freshman boys’ and JV girls’ soccer teams compete and where its cross country, freshman football, volleyball, basketball, and indoor and outdoor track teams practice and compete.

The District provided OCR aerial photographs of all of the fields and tennis courts referenced above, as well as a blueprint of a fieldhouse with two pairs of adjoining boys' and girls' locker rooms that appear to be of approximately equal size. The District informed OCR in June 2018 "that the Town of Falmouth recently voted to approve the construction of a multi-purpose artificial turf athletic field/complex on the . . . School campus," which "will commence and be completed some time [sic] during the 2018-2019 school year" and "will provide expanded and upgraded practice and game facilities and opportunities for some" of the School's female and male athletic teams. The District also noted that it had made "significant improvements . . . to the girls' softball field" since 2016, including "fencing and field improvements, [a] new scoreboard, etc.," and "[a]n additional \$18,000 donation from the Falmouth Road Race" would "be used to complete softball field improvements." The District has not provided any additional information regarding the provision of locker rooms, practice, and competitive facilities to its male and female athletes.

#### *Provision of Booster Club Funding*

The Complainant alleged that for the 2016-2017 school year, booster clubs provided the equivalent of \$51,727 in additional benefits to boys' teams as compared to girls' teams, and the "District does not offset such benefits through the provision of equivalent equipment, services, facilities, apparel or other benefits to the female athletes or female teams." As an example, the Complainant alleged that "the boys' baseball Booster Club provides benefits to the boys' . . . baseball teams through the provision of equipment, apparel, facilities and other benefits," but the "District does not offset such benefits through the provision of equivalent equipment, apparel and other benefits to the girls' . . . softball teams."

The Complainant also informed OCR that "District programs for female athletes commenced in recent years are either not funded entirely by the District or require private funding to operate." She noted that "[g]irls' ice hockey was added by the District as a varsity sport in 2004 only on the basis that parents would fund" "\$5000 per year" for "the ice time costs of the program"; girls' gymnastics "was added by the District on the basis that it would be parent funded [sic] to operate"; and girls' "[f]reshman volleyball was added by the District with volunteer unpaid coaching staff, despite the requests of parents to provide paid coaching staff and otherwise fund the team." She added that girls' "[f]reshman volleyball is not a separately funded team from the [JV] and varsity volleyball teams for transportation, coaching, officials and other costs," and the "District does not fully fund freshman volleyball."

The District explained that it "funds female and male athletic programs using similar methods, protocols, and oversight" and its "ongoing conversations with outside booster and community funding sources relays a consistent message so that any potential or perceived inequities are timely addressed and resolved." The District provided OCR its "Guidelines for Falmouth School District Booster Clubs and other Fundraising Organizations" (Guidelines), which state that the District, "being federally funded, is required to follow Title IX equity laws and policies in its athletic programs through the fundraising groups that support such programs." The Guidelines note that "equity principles and compliance benchmarks described in the Title IX law must be used to guide fundraising efforts and resource allocation decisions," as "it is the District's

responsibility to know what resources are coming into a program and to avoid any disparity that the resources may create in terms of financial benefits to girls’ and boys’ teams and programs.” Accordingly, the Guidelines provide that “[a]ll booster clubs shall submit to the Athletic Director, on an annual basis, a financial and fundraising budget report which shall, at a minimum, outline the proposed fundraising activities, proposed expenses and contributions to teams or programs, and any anticipated or recently completed major expenditures for the time period.” The Guidelines also require that “[e]ach booster club shall submit a post-season financial report to the Athletic Director that contains at a minimum an itemized list of income and expenses from the season.” The Guidelines state that “[a]ll contributions to athletic teams or programs, whether direct or indirect, must be approved in advance by the Athletic Director so as to ensure compliance with Title IX regulations.” They also state that “[a]ny and all purchases of equipment, materials or instruction for any program or organization shall have the prior written approval of the District Athletic Director.” The District did not provide OCR with further information explaining how it tracks income from various sources and expenses or otherwise implements these guidelines.

The District provided OCR invoices and receipts for some expenses (e.g., electricity, ice time, and buses), income and expense reports, and booster club reports; however, it is not always clear what the source of funding is or for which sport or team it is being used. The Complainant alleged that, notwithstanding the Guidelines, “an athletic department accounting process is not in place to evaluate the impact of such [outside] income on the District’s ability to provide equivalent funds or facilities or equipment to girls’ teams to offset the booster club financial benefits to boys’ teams.”

The District provided OCR with financial reports from its booster clubs for the 2016-2017 and 2017-2018 school years indicating the following expenses:

#### **2016-2017**

<b>Sport</b>	<b>Sex</b>	<b>Expenses</b>
Baseball	Boys	\$7,355.00
Football	Boys	\$24,194.26
Ice Hockey	Boys	\$38,250.00
Ice Hockey	Girls	\$26,400.00

#### **2017-2018**

<b>Sport</b>	<b>Sex</b>	<b>Expenses</b>
Baseball	Boys	\$7,503.00
Basketball	Boys	\$2,020.00
Field Hockey	Girls	\$3,266.00
Football	Boys	\$38,704.93
Ice Hockey	Boys	\$27,101.11
Ice Hockey	Girls	\$11,460.00
Sailing	Co-ed	\$3,456.28
Softball	Girls	\$8,153.26



The District also indicated that during the 2017-2018 school year, it received the following donations from non-booster club sources: \$500 for the District's football teams, \$18,000 for softball facilities and equipment, and \$37,425 for scoreboards.

These figures represent total outside funding supporting the District's interscholastic athletics program of \$96,199.26 during the 2016-2017 school year and \$157,589.58 during the 2017-2018 school year.<sup>18</sup> They also indicate that during the 2016-2017 school year, the average female student athlete benefited from \$77 in outside funding while the average male student athlete benefited from \$167 in outside funding. Similarly, assuming that the donation for scoreboards benefited all the District's student athletes equally, the figures indicate that during the 2017-2018 school year, the average female student athlete benefited from \$168 in outside funding while the average male student athlete benefited from \$212 in outside funding.

### **Resolution**

OCR has identified issues that require further investigation prior to making a compliance determination.

First, the evidence reviewed to date raises questions as to whether the District has been effectively accommodating the interests and abilities of its female students in its interscholastic athletics program through the 2017-2018 school year. OCR has not yet reviewed data regarding steps the District may have taken to accommodate the interests and abilities of its female students since that time.

Second, the Complainant alleged that there have been disparities between the boys' and girls' interscholastic athletics programs in the District's scheduling of games and practice time, provision of opportunities for coaching, assignment and compensation of coaches, and provision of locker rooms, practice and competitive facilities during the 2017-2018 school year. Without having conducted a site visit to inspect the District's interscholastic athletics program and interview coaches and student athletes, OCR does not have enough information to determine if these disparities continue to exist and, if so, whether the disparities are of a substantial and unjustified nature.

Third, the evidence reviewed to date raises questions as to whether there were inequities in the amounts raised for booster clubs benefiting the boys' teams and those benefitting the girls' teams during and prior to the 2017-2018 school year. However, OCR does not have enough information to determine whether the District offset those benefits or whether any such inequities currently exist. Relatedly, the evidence reviewed to date raises questions as to whether the District lacks a system for comprehensively documenting all income and expenses for its interscholastic athletic program, which is necessary to ensure equity between the sexes, but OCR has not conducted interviews with District employees to determine whether this is the case.

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<sup>18</sup> For comparison purposes, excluding coaches' stipends and the salaries of other athletic department staff, the District's interscholastic athletics program had an expended operating budget of \$144,148 for fiscal year 2017 and an approved operating budget of \$195,204 for fiscal year 2018.

## **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.<sup>19</sup> 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. 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.

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/

Timothy Mattson  
Compliance Team Leader

Enclosure

cc: Principal Mary Gans (*by email*: [mgans@falmouth.k12.ma.us](mailto:mgans@falmouth.k12.ma.us))

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<sup>19</sup> The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.