

RESOLUTION AGREEMENT
Falmouth Public Schools
OCR Complaint No. 01-18-1164

The Falmouth Public Schools (District) has voluntarily entered into this agreement to resolve the allegations in the above-referenced complaint. The District assures that it will take the following actions. The District agreed to resolve this complaint prior to the completion of investigation by the U.S. Department of Education, Office for Civil Rights (OCR) pursuant to Section 302 of OCR's *Case Processing Manual*.

I. OPPORTUNITY TO PARTICIPATE IN INTERSCHOLASTIC ATHLETICS

A. EFFECTIVE ACCOMMODATION OF INTERESTS AND ABILITIES

The District agrees to provide participation opportunities for female and male students at the District's high school that effectively accommodate the athletic interests and abilities of both sexes, consistent with the requirements of Title IX, the regulation at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies. The District will provide athletic participation opportunities that are either substantially proportionate to each sex's enrollment in the District's high school (Part One compliance) or demonstrate that the interests and abilities of female students are fully and effectively accommodated by the District's current athletics program (Part Three compliance).

B. DETERMINATION OF UNMET INTERESTS AND ABILITIES

In order to determine whether there are unmet athletic interests and abilities among female students in the District's high school, the District will take the following actions:

By June 30, 2021, the District will conduct an objective interests and abilities assessment of grades 8-12 to determine the existence and/or scope of any unmet athletic interests of female students. The assessment will consider whether the interested students have the ability to sustain an interscholastic team. The interested students do not need to have the ability to sustain a successful or elite team; rather, they only need to have the potential to participate in team tryouts, practices, and competitions, and, with coaching, the potential to attain sufficient ability to participate at the particular level of competition (varsity, junior varsity, freshman, etc.) in which they have expressed interest. The assessment will be based on multiple indicators of interests and abilities and shall include the following:

1. A survey of all female students in the District's grades 8-12, and those eighth grade students not currently enrolled in the District whom the District has reason to believe will enroll as a ninth grade student in the District, which shall be administered no later than May 31, 2021. The survey shall seek information on female students' interests and abilities to participate in sports currently offered and not currently offered by the District. A copy of the draft survey will be submitted to OCR for review and approval before it is distributed to students.

2. To the extent that they currently exist, a review of the results of recent surveys of students, or other information collected from students using a method designed to fully and accurately assess unmet athletic interests and abilities in interscholastic sports among female students.
3. Identification of sports, squads, and levels of sports for female students that are not currently offered by the high school but are offered by schools within the District's normal competitive region and geographic area.
4. From the 2017-2018 spring season through the 2019-2020 winter season, female students' rates of participation in interscholastic sports and any non-mandatory or elective physical education classes offered at District schools and in community sports leagues, clubs, or other youth programs in the District's normal competitive region and geographic area.
5. For the last three school years (2017-2018, 2018-2019, and 2019-2020), a review of any requests (whether oral, written, formal, or informal) made to District administrators, coaches, or staff by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing club sport to interscholastic sport status, and a review of any such requests made to School Committee members for the last two school years (2018-2019 and 2019-2020).
6. From the 2017-2018 spring season through the 2019-2020 winter season, a review of any assessments made by District coaches or staff during tryouts or interscholastic competition offered by the District or in community sports leagues or other youth programs offered in the District's normal competitive region and geographic area, and any other information reflecting the abilities of female students to compete in a particular sport, such as prior participation in that sport or a similar sport at the middle or high school level or interscholastic or community level, general athletic ability, participation in other high school interscholastic sports, the nature of the particular sport, and other relevant factors.
7. From the 2017-2018 spring season through the 2019-2020 winter season, a review of the number of female students who were cut from each team following tryouts and the reasons for the cut.
8. Any other information that demonstrates the athletic interests and abilities of female students in grades 8-12.

REPORTING REQUIREMENTS FOR SECTION I(B):

To demonstrate its compliance with Section I(B) of this Agreement, the District will submit the following information to OCR:

1. By April 30, 2021, a copy of the draft survey referenced in Section I(B)(1) above, for OCR's review and approval.
2. By April 30, 2021, a complete description of the planned methodology to conduct the survey, including how the survey will be distributed, the number of students who will receive the survey, any planned follow-up to the initial distribution of the survey, the name and contact information for the individual(s) who will evaluate the survey responses, and the protocol for retaining any notes or other documents compiled during the review of the survey.
3. By June 30, 2021, a detailed report about the assessment conducted pursuant to Section I(B) of this Agreement. The report will include, at a minimum, the following information:
 - a. A copy of the results of the survey referenced in Section I(B)(1) above, including but not limited to the number of students, by sport, who indicated an interest in each sport, a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of students who received the survey and the number of responses, the grade levels of students who received the survey, any follow-up to the initial distribution of the survey, the name and contact information for the individual(s) who evaluated the survey responses, and a copy of any notes or other documents compiled during the review of the survey.
 - b. An analysis of the results of other recent surveys of students, if any, or other information collected from students using a method designed to fully and accurately assess unmet athletic interests and abilities in interscholastic sports among female students.
 - c. A summary of sports, squads, and levels of sports for female students that are not currently offered by the high school but are offered by schools that are within the leagues in which the District competes or the District's normal competitive region and geographic area.
 - d. From the 2017-2018 spring season through the 2019-2020 winter season, rates of participation by female students in interscholastic sports and any non-mandatory or elective physical education classes offered at District schools, and in community sports leagues, clubs, or other youth programs in the District's normal competitive region and geographic area.
 - e. For the last three school years (2017-2018, 2018-2019, and 2019-2020), a copy of any written requests, if any, and a summary of any non-written requests made by or on behalf of female students to add a particular sport,

squad, or level of sport, or elevate an existing club sport to interscholastic sport status.

- f. From the 2017-2018 spring season through the 2019-2020 winter season, a summary of any assessments made during tryouts, or other information reflecting the ability of female students to compete in a particular sport, such as prior participation in that sport or a similar sport at the middle or high school level or club or community level, general athletic ability, participation in other high school interscholastic sports, the nature of the particular sport, and other relevant factors.
- g. From the 2017-2018 spring season through the 2019-2020 winter season, a summary of the number of female students who were cut from each team and the reason for the cuts.
- h. Any other information that was considered by the District as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of female students at its high school.

C. ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

If, through the above-described assessment, the District identifies a sport or sports in which there are sufficient but unmet interests and abilities of female students to participate at the interscholastic level at the high school, the District will add athletic opportunities as described below until such time as the District demonstrates Part One or Part Three compliance.

For purposes of this provision, “sufficient interest” is defined as the minimum number of eligible athletes needed to support a team. For “sufficient ability,” it is sufficient that interested students have the potential to sustain an interscholastic team, and students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through tryouts or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, freshman, etc.) in which they have expressed interest.

OCR has made clear to the District and the District understands that OCR does not require or encourage the elimination of any District athletic teams, and that it seeks action from the District that does not involve the elimination of athletic opportunities, because nothing in Title IX or the three-part test requires an institution to cut teams or reduce opportunities for students who are participating in interscholastic athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of female and male students.

In providing additional athletic opportunities for female students until the District demonstrates Part One or Part Three compliance, the District shall do the following:

1. Sports Currently Offered:

- a. The District will determine, for sports that are currently offered as interscholastic sports, whether there is a sufficient number of female students with the interests and abilities to support the creation of additional levels of competition or multiple squads at the same level of competition, and sufficient competition within the high school's normal competitive region, to support additional levels of competition (junior varsity, freshman, etc.) or multiple squads at the same level of competition in those sports. If so, the District will add additional levels of competition or squads at the same or a lower level of competition in those sports by the 2022-2023 school year.
- b. In order to increase the competitive participation opportunities for female students, the District will consider expanding the squad sizes for interscholastic sports currently offered at the high school, consistent with the nature of each sport and the level of interest in each sport. The District will increase the size of each squad where determined to be appropriate.

2. Sports Not Currently Offered:

The District will determine whether there is a sufficient number of female students with sufficient interests and abilities to support the addition of a team or multiple teams (varsity, junior varsity, freshman, etc.), in sports not currently offered by the high school as interscholastic sports and whether there is sufficient competition within the high school's normal competitive region and geographic area for those teams/sports. If so, the District will add a team or multiple teams in those sports by the 2022-2023 school year.

3. Response to Developing Interests and Abilities:

For any sport that is not currently offered, and where there is a sufficient number of female students who have sufficient interests and abilities in that sport, but where the District determines that there is not sufficient competition within the high school's normal competitive region, the District will take ongoing steps to develop students' interests and abilities. These steps may include establishing club sports, exploring the feasibility of establishing competition in the District's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.

4. Additional Interscholastic Opportunity:

To the extent that the District adds additional levels of teams, expands squad sizes, or adds new sports, the District will provide those teams, in a manner comparable to other interscholastic teams, with sufficient funds in their budgets to cover expenses that include, but are not limited to: scheduling of games and practice time; coaches; locker rooms; and practice and competitive facilities. The District will also publicize any new sports, additional levels of teams, or newly-

created opportunities through written notices, verbal announcements, and postings on the District's website.

REPORTING REQUIREMENTS FOR SECTION I(C):

1. By December 31, 2021, if the District's assessment demonstrates that it is fully and effectively accommodating the athletic interests and abilities of its female high school students, the District will submit information detailing its determination of the same.
 2. By December 31, 2021, if the District's assessment demonstrates that it is not fully and effectively accommodating the athletic interests and abilities of its female high school students, the District will provide OCR with an action plan detailing the steps the District will take pursuant to Section I(C) to create new opportunities for female students. This action plan will detail the timetable for the addition of new sports, levels of teams, or newly-created opportunities and/or the expansion of squad sizes. It will also describe how the creation of additional athletic opportunities will lead to Part One and/or Part Three compliance. If applicable, the action plan will include a description and supporting documentation of the District's efforts to publicize athletic opportunities to students pursuant to Section I(C)(4). The District will submit an updated action plan by June 30 of each school year until OCR determines that the District has demonstrated Part One or Part Three compliance.
 3. By December 31st of each school year until OCR determines that the District demonstrates Part One or Part Three compliance, the District will provide information regarding any increases to the size of its squads, as described by Section I(C) above.
 4. By December 31st of each school year until OCR determines that the District demonstrates Part One or Part Three compliance, the District will provide OCR with copies of the squad lists for each team.
 5. By December 31st of each school year until OCR determines that the District demonstrates Part One or Part Three compliance, the District will provide the high school's enrollment numbers by sex.
- D. ADDITIONAL COMMITMENTS TO IMPROVE THE ATHLETIC OPPORTUNITIES FOR THE UNDERREPRESENTED SEX
1. The District will develop a procedure for students or other interested parties, such as coaches or parents, to request the addition of new sports or levels of sports at the high school. The procedure will be published in the Athletic Handbook and on the District's athletics program website (i.e., <https://www.falmouth.k12.ma.us/domain/197>).

2. At the beginning of each school year, the District will update its athletics program website to accurately reflect its high school sports teams, including whether the teams are boys', girls', or co-ed.
3. The District commits to conducting interests and abilities assessments, including surveys of the underrepresented sex, as needed to ensure ongoing Part One or Part Three compliance.

REPORTING REQUIREMENTS FOR SECTION I(D):

By the tenth school day of each school year until the District demonstrates Part One or Part Three compliance, the District will submit a link to its athletics program website demonstrating that it has posted its procedure for requesting new sports or levels, as required by Section I(D)(1) above, and an accurate list of teams, as required by Section I(D)(2) above.

II. EQUALITY OF PROGRAM BENEFITS

The District agrees to provide equal athletic program benefits for members of both sexes consistent with the requirements of Title IX, the regulations at 34 C.F.R. § 106.41(c)(3), (5), (6), and (7), and applicable OCR policies. Where booster clubs or other outside funding sources provide greater benefits for teams of one sex, the District shall ensure that teams of the other sex receive equivalent benefits.

A. BOOSTER CLUBS

The District will revise its "Guidelines for Falmouth School District Booster Clubs and other Fundraising Organizations" (Guidelines) to specify how the District will monitor the amounts raised through outside fundraising and the benefits provided for female and male students with outside funding with regard to any of the components outlined at 34 C.F.R. § 106.41(c). Where the District determines that outside funding provides greater benefits for one sex, the Guidelines will provide a process for the District to ensure that the other sex receives equivalent benefits.

REPORTING REQUIREMENT FOR SECTION II(A):

By April 30, 2021, the District will submit a draft revision of the Guidelines to OCR for review and approval along with a plan for implementing the revised Guidelines. The District will begin implementing the revised Guidelines upon OCR's approval.

B. BENEFITS ASSESSMENT

By June 30, 2021, the District will conduct an objective benefits assessment of its athletics program. The assessment will be designed to accurately reflect all benefits, including benefits provided through booster clubs and other outside funding sources. The District's assessment will include, but is not limited to, the following components:

1. Scheduling of games and practice times, including the

- a. number of competitive events per sport;
 - b. number and length of practice opportunities;
 - c. time of day competitive events are scheduled;
 - d. time of day practice opportunities are scheduled; and
 - e. opportunities to engage in available pre-season and post-season competition.
2. Opportunity to receive coaching and assignment and compensation of coaches, including the
 - a. relative availability of full-time coaches;
 - b. relative availability of part-time and assistant (including volunteer) coaches;
 - c. training, experience, and other professional qualifications;
 - d. professional standing;
 - e. rate of compensation (per sport, per season);
 - f. duration of contracts;
 - g. conditions relating to contract renewal;
 - h. nature of coaching duties performed;
 - i. working conditions; and
 - j. other terms and conditions of employment.
3. Provision of locker rooms, practice and competitive facilities, including the
 - a. quality and availability of the facilities provided for practice and competitive events;
 - b. exclusivity of use of the facilities provided for practice and competitive events;
 - c. availability of locker rooms;
 - d. quality of locker rooms;
 - e. maintenance of practice and competitive facilities; and
 - f. preparation of facilities for practice and competitive events.

Based on the assessment, the District will develop an action plan to ensure the provision of equal program benefits for students of both sexes. The District commits to conducting future benefits assessments as needed to ensure the ongoing provision of equal program benefits for female and male students.

REPORTING REQUIREMENTS FOR SECTION II(B):

1. By September 1, 2021, the District will submit a report about the assessment conducted pursuant to Section II(B) of this Agreement. The report will include the methodology used for each component in Section II(B), the methodology used to ensure that the findings accurately reflect program benefits provided through booster clubs and other outside funding, and, as appropriate, the District's action plan to ensure the provision of equal program benefits for female and male students.

2. By September 1st of each subsequent school year, the District will submit an updated assessment and action plan until the District demonstrates that it provides equal program benefits for students of both sexes.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms and obligations of this Agreement. Upon the District's satisfaction of the commitments made under the Agreement, OCR will close the case.

The District understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the District's representative below.

By: /s/
Superintendent
Falmouth Public Schools

Date: 10.7.20