



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

May 4, 2020

Superintendent Mary Alice McLean
Regional School Unit 71

By email: mamclean@rsu71.org

Re: Complaint No. 01-20-1076
Regional School Unit 71

Dear Superintendent McLean:

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 Regional School Unit 71 (District). On January 2, 2020, OCR began investigating whether the District discriminated against female students on the basis of sex by failing to provide equal interscholastic athletic opportunities for students of both sexes with respect to the scheduling of games and practice times, in violation of 34 C.F.R. § 106.41(c)(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), 20 U.S.C. § 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.

Summary of Preliminary Investigation

Number of Regular Season Competitive Events Per Sport

The District informed OCR that “[t]he competitive schedules” for the District’s interscholastic athletic teams “are developed by the Kennebec Valley Athletic Conference (‘KVAC’).” It noted that “[e]ach sport has a committee which is responsible for developing the schedule,” which “is shared with the coaches for input,” and “[t]he KVAC committee then brings it to the membership for a vote and adoption.”

The District provided OCR calendar year 2019 competition schedules for all of its interscholastic sports teams. These schedules indicate that the average female athlete participated in 12.3 total regular season competitions (5.2 home and 7.0 away), while the average male athlete participated in 11.6 total regular season competitions (4.9 home and 6.7 away).

The evidence reviewed to date indicates that female athletes in the District participated in slightly less than one additional regular season competitive event, on average, than male athletes during calendar year 2019. Female athletes had a slightly higher number of both home and away competitions, on average, than male athletes during 2019. OCR has not reached a determination whether the disparity is significant and, if so, whether the District has taken adequate steps to mitigate it.

Number and Length of Practice Opportunities

The District informed OCR that its “Athletic Director in conjunction with the coaches of each sport work together to establish a practice schedule.” It explained that “[f]actors to be considered include facility availability and number of teams needing to use this space, and availability of coaches, as many of [the District’s] coaches work full-time jobs outside the school system.” The District noted that, “[w]hen possible, with multiple teams using a facility, practices are rotated,” but “due to work commitments of coaching staff, this is not always possible.”

The District provided OCR calendar year 2019 practice schedules for all of its interscholastic sports teams. These schedules indicate that, with the exception of days when athletes participate in a competitive event, all male and female athletes participate in daily practices, Monday through Friday, during the regular season.¹ The varsity and junior varsity (JV) football teams participate in an additional practice on Saturdays.²

During calendar year 2019, the average female athlete participated in one hour, thirty-nine minutes of practice each day; eight hours, fifteen minutes of practice each week; and 84.4 hours of practice total during the regular season. The average male athlete participated in one hour, forty-two minutes of practice each day; eight hours, forty-five minutes of practice each week; and 96.5 hours of practice total during the regular season.³

The evidence reviewed to date indicates that, on average, male athletes’ practices were three minutes longer than female athletes’ practices during calendar year 2019. Without accounting for days on which competitive events were scheduled and athletes consequently did not practice, on average during calendar year 2019, male athletes in the District participated in thirty-five more minutes of practice each week due largely to the football teams’ Saturday practices and the overwhelmingly male compositions of these teams, and 12.1 more hours of practice over the course of the regular season due largely to the longer average season for male athletes. OCR has not reached a determination whether the disparity is significant and, if so, whether the District has taken adequate steps to mitigate it.

¹ The sole exception is the District’s unified basketball team, which practiced on days when the District’s other four interscholastic basketball teams were competing. During calendar year 2019, the unified basketball team was composed of nine male athletes, nine female athletes, and one non-binary athlete.

² The District informed OCR that thirty-two male athletes and one female athlete participated in interscholastic football for the District during calendar year 2019.

³ These figures do not account for days when athletes participated in a competitive event in lieu of practice.

Time of Day Competitive Events Are Scheduled

Based on the competition schedules provided by the District, the evidence indicates that, on average, female athletes' competitive events began at 3:20 PM and male athletes' competitive events began at 3:47 PM during calendar year 2019. The only team that had an average competitive event start time after 6 PM during calendar year 2019 was the varsity football team, which was composed of sixteen male and zero female athletes.

The evidence reviewed to date indicates that, on average, male athletes' competitive events began twenty-seven minutes later than the average competitive event start time for female athletes, largely due to the varsity football team's evening game times. It is unclear whether the District's male or female athletes would consider this disparity to be more advantageous to male athletes, female athletes, or neither. The District informed OCR that all teams' competition schedules are established by the KVAC rather than the District, and thus the District has limited control over this disparity. If an association rule is discriminatory, a school district's membership is not a defense. OCR has not reached a determination whether the disparity is significant and, if so, whether the District has taken adequate steps to mitigate it.

Time of Day Practice Opportunities are Scheduled

Based on the practice schedules provided by the District, the evidence indicates that, on average, male athletes' practices began at 3:10 PM and female athletes' practices began at 3:36 PM during calendar year 2019. This disparity was due to the varsity and JV boys' soccer teams practicing at 3:00 PM while the respective girls' soccer teams practiced at 4:30 PM, and the boys' swim team practicing at 2:30 PM while the girls' swim team practiced at 5:00 PM. All practice times for other sports with analogous girls' and boys' teams were the same.

The District provided OCR an email indicating that the District's Athletic Director agreed with a parent of a female swimmer that the girls' swim team's practice time was "not ideal." The District informed OCR that "[a]s a small school unit in rural Maine, [it] has limited potential coaches available – none of whom are full time," and "[a]s a result, many of [the District's] teams schedule their practice around the coach's personal schedule." It reported that it had "approached the current girls [sic] swim coach and asked if she had any flexibility in her work schedule to attend earlier practices," but "[h]er current job . . . does not allow her to be available for 2:30 practice on practice days," although it "does allow her to leave early on meet days." The District noted that "coaches are hired on a one year basis" and "[e]ach year there is an opportunity for other qualified applicants to apply," but the current girls' swim coach "was the only applicant to apply for the job" for the 2019-2010 academic year. The District also informed OCR that the later practice start time for the girls' soccer teams as compared with the boys' soccer teams was "based on coach/job schedule[s]," but it did not provide similar information regarding efforts it had undertaken to mitigate this disparity.

The evidence reviewed to date indicates that, on average, male athletes' practices began twenty-six minutes earlier than the average practice start time for female athletes, due wholly to the girls' soccer and swim teams' later start time as compared to the respective boys' soccer and swim teams. There is evidence in the record indicating that a later practice start time is "not

ideal” because of the need for athletes to wait after school for practice to start. The District identified a legitimate nondiscriminatory reason for this disparity – scheduling limitations relating to the girls’ soccer and swim teams’ coaches’ outside jobs. OCR has not reached a determination whether the disparity is significant and, if so, whether the District has taken adequate steps to mitigate it.

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

The District informed OCR that “[a]ll teams have the opportunity to run summer sessions” – specifically, “Football, Soccer, Baseball, [and] Softball play in organized summer leagues,” and “[t]he other sports run clinics and occasionally scrimmage teams from other schools.” It also noted that all varsity athletes have the opportunity to participate in postseason competitions, but they must satisfy the performance criteria established by the KVAC, whether individually or as a team, in order to do so.

The District provided OCR calendar year 2019 competition schedules for all of its interscholastic sports teams. These schedules indicate that the average female athlete participated in 1.4 team preseason competitions, 0.7 team postseason competitions, and 0.1 individual postseason competitions (for those athletes participating in a sport providing for such individual competitions). The average male athlete participated in 1.2 team preseason competitions, 0.8 team postseason competitions, and 0.1 individual postseason competitions.

The evidence reviewed to date indicates that female athletes in the District participate in a slightly greater number of preseason competitive events than male athletes, on average. While male athletes in the District participate in a slightly greater number of postseason competitive events, the District advised that they must satisfy the performance criteria established by the KVAC, whether individually or as a team, in order to do so. This appears to be a legitimate, nondiscriminatory reason for these slight disparities in preseason and postseason competition opportunities, which also appear to offset each other.

Season of Sport and Length of Season

The District informed OCR that the boys’ and girls’ varsity cross country teams, the girls’ varsity and JV field hockey teams, the boys’ varsity football team, the co-ed JV football team, the co-ed varsity golf team, and the boys’ and girls’ varsity and JV soccer teams practice and compete in the fall; the boys’ and girls’ varsity and JV basketball teams, the co-ed unified basketball team, the boys’ and girls’ varsity indoor track teams, the boys’ and girls’ varsity swim and dive teams, and the co-ed varsity wrestling team practice and compete in the winter; and the boys’ varsity and JV baseball teams, the girls’ varsity and JV softball teams, the boys’ and girls’ varsity tennis teams, and the boys’ and girls’ varsity track and field teams practice and compete in the spring. The District informed OCR that all spring sports teams began practicing on April 1, 2019;⁴ all fall sports teams began practicing on August 19, 2019; and all winter sports teams began practicing on November 18, 2019.

⁴ The District noted that baseball and softball pitchers and catchers began practicing on March 25, 2019.

The District provided OCR calendar year 2019 competition schedules for all of the aforementioned interscholastic sports teams. These schedules indicate that the average female athlete participated in a 7.1 week regular season for competitions (the period between the first and last regular season competition) and a 9.7 week regular season for practice (the period between the practice start date and the last regular season competition), whereas the average male athlete participated in a 7.2 week regular season for competitions and a 10.6 week regular season for practice. OCR has not identified any significant sex-based disparities with respect to the season of sports and length of seasons for the District's interscholastic athletes. To the extent any disparities may exist, competition schedules are established by the KVAC rather than the District, and thus the District has limited control over any such disparity.

In contrast, the evidence reviewed to date indicates that male athletes in the District participate in an average of one additional week of practice prior to the last regular season competition as compared to the average female athlete. This disparity is exacerbated by the thirty additional minutes of practice that male athletes participated in each week, on average, as compared to the average female athlete, which, as noted above, resulted in an average of 12.1 additional hours of practice for the average male athlete over the course of the regular season during calendar year 2019. OCR has not reached a determination whether the disparity is significant and, if so, whether the District has taken adequate steps to mitigate it.

Conclusion

OCR investigated whether the greater average practice opportunities and more advantageous average practice start times for male athletes in the District during calendar year 2019 constituted a significant disparity and, if so, whether it was adequately offset by the greater number of regular season competitive events in which female athletes participated during calendar year 2019.

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.⁵ Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address the allegation 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

⁵ The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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: Michael Buescher, Esq. (via email: mbuescher@dwmlaw.com)