



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 25, 2023

Dr. Linda Dwight
Superintendent
By email: ldwight@psharvard.org

Re: Complaint No. 01-22-1355
Harvard Public Schools

Dear Dr. Dwight:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Harvard Public Schools (District). The Complainant alleges that the District discriminates against female students on the basis of sex in its interscholastic athletic program. Specifically, the complaint alleges that the District denies female athletes equal athletic opportunities with respect to the provision of locker rooms and practice and competitive facilities. 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. Section 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving federal financial assistance from the U.S. Department of Education. Because the District receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Title IX.

OCR addressed the following legal issue:

Whether the District denies female athletes equal athletic opportunities with respect to the provision of locker rooms and practice and competitive facilities, in violation of 34 C.F.R. § 106.41(a) and (c)(7).

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.

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The Title IX regulation, at 34 C.F.R. § 106.41(c)(7), requires that a school district provide equal athletic opportunities for male and female students regarding the provision of locker rooms and practice and competitive facilities. When determining whether a school district is in compliance with Title IX with respect to the provision of locker rooms and practice and competitive facilities, OCR examines, among other factors, the equivalence for male and female students in: (1) the 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.

Summary of Evidence Obtained

The District is a small school district and has one middle/high school, the Bromfield School (the School), which serves grades six through twelve. The School provides an opportunity for students to participate in 19 different sports including: baseball, boys’ and girls’ basketball, boys’ and girls’ cross country, field hockey, co-ed golf, boys’ and girls’ indoor track, girls’ lacrosse, boys’ and girls’ soccer, softball, boys’ and girls’ swimming and diving, boys’ and girls’ tennis, and boys’ and girls’ track and field. The District reported that for several sports not offered by the School, the District arranges for its students to participate on athletic teams at neighboring host districts through cooperative sharing agreements, i.e., “co-ops”.

During the 2021-2022 school year, the School offered a middle school softball team and arranged for a co-op for junior varsity and varsity players at a neighboring district.¹ The District reported to OCR that for the 2022-2023 season, there may be enough interested players to fill two softball teams (middle school and junior varsity) at the School. The District offers middle school, junior varsity, and varsity baseball teams at the School.

According to the complaint, the boys’ baseball program has access to superior practice and competitive play facilities compared to the girls’ softball program. During the 2021-2022 school year, the School’s softball team practiced and competed at a town softball field, i.e., Ann Lees Field, which is approximately 3.8 miles from the School; whereas, the baseball teams practiced and competed at a field located on School grounds. The School does not provide designated transportation for softball players to Ann Lees Field, so softball players take private transportation or ride the regular school bus route, which, according to the Complainant, takes about 30 minutes.

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¹ The Complainant explained to OCR that during the 2018-2019 school year, the District removed the School’s junior varsity/varsity softball field from the grounds of the District’s elementary school in connection with a renovation project, and later relocated the softball field to town property on Ann Lees Road. The District reported to OCR that due to delays in construction and poor quality work in the conversion of the Ann Lees Field, the School did not have a playable softball field for the 2018-2019 season and that its softball program became a co-op with a neighboring host district.

During the 2021-2022 school year, the softball field did not have batting cages or bleachers; both of which the baseball program had. The Complainant XXXXXXXXXXXXXXXXXXXXXXX provided information indicating that the softball field is poorly and/or inconsistently maintained, as compared to the baseball field, and described the outfield as deeply rutted. The District reported to OCR that the softball and baseball fields are in “fair” condition, and that the groundskeeping and maintenance process is the same for both fields.

The School has one boys’ and one girls’ locker room, which are open to all students. Since the baseball field is adjacent to the School, the baseball team has use of the School’s locker room and bathrooms. Ann Lees Field does not have a changing area or plumbing onsite. The District reported to OCR that, during the 2021-2022 school year, there were one or two porta potties and an equipment shed that could be used for changing at the Ann Lees Field.

The District reported to OCR that during the summer of 2022, the District’s School Building Committee approved a plan to convert a youth baseball field—which is one mile from the School—into an additional softball field and to improve the School’s current softball field. The District reported that in connection with this project, it will install batting cages, two sets of bleachers, and an additional storage shed for use as a changing area at Ann Lees Field before the start of the 2023 softball season. The Athletic Director told OCR that assuming the School has two softball teams in 2023, the plan is for the softball program to use both fields for practice and the Ann Lees Field for competitive play, unless both teams are scheduled to play a game at the same time.

Analysis

While OCR has not made a compliance determination, based on its investigation to date, OCR has concerns as to whether the District is providing an equal opportunity to its female athletes with respect to locker rooms and practice and competitive facilities. The District has represented to OCR that it has recently taken steps to remedy some of the concerns identified in the OCR complaint regarding its softball facilities, including: adding a new practice field that is closer to the School, and a plan to install batting cages, bleachers, and an additional storage shed. OCR has remaining concerns about the location, quality, and maintenance of the competitive softball field as compared to the baseball field, however, and the proposed plan for the softball teams to practice and compete on different fields. OCR also has concerns that, unlike the baseball field, the softball field does not have plumbing or a locker room onsite.

Conclusion

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

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 a 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/

Meighan McCrea
Compliance Team Leader

Enclosure

cc: Matthew W. MacAvoy, Esq. (by email: mwm@snclegal.com)