

RESOLUTION AGREEMENT
Complaint No. 02-11-1028
New York City Department of Education

The New York City Department of Education (NYCDOE) denies any violation of Title IX of the Education Amendments of 1972 (Title IX) or its implementing regulations, and any other law with respect to its sports programs. However, in order to resolve U.S. Department of Education, Office for Civil Rights (OCR) Complaint No. 02-11-1028, the NYCDOE agrees to fully implement this resolution agreement (Agreement) and to ensure its compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, with respect to the issue of whether the selection of interscholastic sports at the NYCDOE's high schools effectively accommodates the interests and abilities of male and female students to the extent necessary to provide equal athletics opportunities. The NYCDOE's interscholastic athletics program is administered through the Public School Athletic League (PSAL), accordingly, this Agreement shall also apply to PSAL.

I. EFFECTIVE ACCOMMODATION OF INTERESTS AND ABILITIES

The NYCDOE agrees to provide participation opportunities for students at the NYCDOE's high schools that effectively accommodate their athletics interests and abilities, consistent with the requirements of the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies. The NYCDOE will provide athletic participation opportunities that are either substantially proportionate to female student's enrollment in its high schools, or demonstrate that the interests and abilities of female students are fully and effectively accommodated by the NYCDOE's current athletics program.

II. DETERMINATION OF UNMET INTEREST AND ABILITY

In order to determine whether there is unmet interest and ability among female students in the NYCDOE's high schools, the NYCDOE will take the following actions:

By June 30, 2015, the NYCDOE will conduct an objective assessment of its female student body at each of its high schools and the eighth grade level of its middle schools to determine the existence and/or scope of any unmet athletic interests of female students, the underrepresented sex in the NYCDOE's athletics programs. The assessment will also consider whether the interested students have the ability to sustain an interscholastic team; noting that they do not need the ability to sustain a successful or elite team, but only need to show that they have the potential to attain sufficient ability to participate at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest. The assessment will be based on multiple indicators of interests, and if applicable, multiple indicators of abilities, and shall include the following:

1. A survey of female students at each NYCDOE high school and the eighth grade level at each middle school. The survey shall seek information on female students' interest, and if applicable, ability to participate in sports currently offered and in sports not currently

offered by the NYCDOE. A copy of the survey that will be used was previously submitted to and approved by OCR. The NYCDOE shall administer the survey, and endeavor to generate a high response rate, including by following up with any schools that have a low response rate.

The NYCDOE also agrees to continue to periodically assess the athletic interests and abilities of its students to ensure that it is equally and effectively accommodating the athletic interests and abilities of its students consistent with Title IX and its implementing regulation.

2. A review of the results of recent surveys of students, if any, or other information collected from students using a method that is designed to accurately assess unmet athletic interests, and if applicable, abilities in interscholastic sports among female students.
3. Identification of sports and levels of PSAL sports for female students offered at each NYCDOE high school during the 2014-2015 school year.
4. For school year 2014-2015, female students' rates of participation in PSAL sports at each high school.
5. A review of any unfulfilled requests received during the 2013-2014 and 2014-2015 school year (whether oral, written, formal or informal) 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.
6. Any other information that demonstrates the athletic interests, and if applicable, abilities, of female students in the NYCDOE's high schools and 8th grade.

III. ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

If through the above-described assessments, the NYCDOE identifies a sport or sports in which there is sufficient but unmet interest, and if applicable, ability of female students to participate at the interscholastic level at a particular high school, the NYCDOE will continue to add athletic opportunities as described below at the high school(s) to meet the expressed interests and abilities of female high school athletes or to achieve a participation rate for female students that is substantially proportionate to their rate of enrollment.

For purposes of this provision, "sufficient interest" is defined as the minimum number of athletes needed to support a team. For "sufficient ability," it is sufficient that interested students and admitted students have the potential to sustain an interscholastic team.

In providing additional athletic opportunities for female high school students to either accommodate their expressed interests and abilities or until their rate of participation is

substantially proportionate to their rate of enrollment at NYCDOE high schools, the NYCDOE shall do the following:

1. Sports Currently Offered:

- a. The NYCDOE will determine, for high-interest sports that are currently offered as interscholastic sports at a variety of high schools representative of the five boroughs, whether there is a sufficient number of female students with the interest, and if applicable, ability to support the creation of additional levels of competition (junior varsity, sophomore, etc.) 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 or multiple squads at the same level of competition in those sports. If so, the NYCDOE will continue to add additional levels of competition or squads at the same or a lower level of competition at the high schools in those sports consistent with the above determination until the NYCDOE achieves a participation rate for female student that is substantially proportionate to their rate of enrollment.
- b. In order to increase the competitive participation opportunities for students who are members of the underrepresented sex, the NYCDOE will consider expanding the squad sizes for interscholastic sports currently offered at a variety of high schools, representative of the five boroughs consistent with the nature of each sport and the level of interest in each sport. The NYCDOE will increase the size of each squad where determined to be appropriate. If necessary, the NYCDOE will provide sufficient coaching staff to support the addition of new athletes to any given squad that is expanded pursuant to this section to ensure that the new athletes on each expanded squad are provided meaningful opportunities to participate in interscholastic athletics.

2. Sports Not Currently Offered:

At a variety of high schools representative of the five boroughs with low female athletic participation rates during the 2013-2014 school year, the NYCDOE will determine whether there is a sufficient number of high school female students with sufficient interest, and if applicable, ability to support the addition of a team or multiple teams (varsity, junior varsity, sophomore, etc.), in sports not currently offered by the high school as interscholastic sports. If so, the NYCDOE will continue to add a team or multiple teams in those sports at the relevant high school until the NYCDOE achieves a participation rate for female students that is substantially proportionate to their rate of enrollment.

3. Response to Developing Interests and Abilities:

For any sport that is not currently offered by a NYCDOE high school where there is a sufficient number of female students who have sufficient interest, and if applicable, ability in that sport, but where the NYCDOE determines that there is not sufficient

competition, the NYCDOE will take ongoing steps to develop students' interest and ability. These steps may include establishing club sports, exploring the feasibility of establishing competition in the NYCDOE's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.

OCR has made clear to the NYCDOE and the NYCDOE understands that OCR does not require or encourage the elimination of any NYCDOE athletic teams and that it seeks action from the NYCDOE 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 male and female students.

4. Additional Interscholastic Opportunities:

To the extent that the NYCDOE adds any sports or additional levels of teams at any of its high schools, the NYCDOE will continue to provide those team(s) with sufficient funds and with support and publicity in a manner comparable to existing interscholastic teams of that level for that particular sport. The NYCDOE will also publicize any new sports or additional levels of teams through postings on the PSAL's website.

IV. ADDITIONAL COMMITMENTS TO IMPROVE THE ATHLETIC OPPORTUNITIES FOR THE UNDERREPRESENTED SEX

1. The NYCDOE will develop a process or procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at the NYCDOE's high schools. The individual(s) responsible for responding to any requests will be identified by name and contact information. This information will also be displayed on the NYCDOE's and/or PSAL's website. The NYCDOE shall retain all requests for new sports or levels of sports made through the procedure or otherwise in written or electronic form for a minimum of five years.
2. At the beginning of the 2015-2016 and 2016-2017 school years, the NYCDOE will provide a written description of all of its sports offerings at each high school to all students in their physical education classes. This information will also be posted on the NYCDOE's and/or PSAL's website.
3. The NYCDOE will maintain the interscholastic athletic squad lists, which shall reflect the participation numbers for each sport, by sex, as of each team's first competitive event. These records will not be destroyed or otherwise altered so that they can be submitted to OCR consistent with the terms of this Agreement.

4. By September 30, 2015, and during the fall of each of two subsequent school years thereafter, the NYCDOE will provide to the Athletic Directors at each NYCDOE high school written notice of the NYCDOE's obligations under the terms of this Agreement.
5. By September 30, 2015, and on an annual basis for two years thereafter, the NYCDOE will provide to the Athletic Director at each NYCDOE high school training on the relevant requirements of Title IX as they pertain to the provision of equal athletic opportunities to boys and girls.

V. REPORTING REQUIREMENTS:

- A. To demonstrate its compliance with the terms of Section II of this Agreement, the NYCDOE will submit the following information to OCR:
 1. By February 28, 2015, a complete description of the planned methodology to conduct the survey, including how the survey will be distributed, the number of surveys to be distributed, the grade levels of students who will receive the surveys, any planned follow-up at the schools where the response rate is low, and the names and contact information for the individual(s) who will evaluate the responses to the surveys.
 2. By August 31, 2015, a detailed report about the assessment conducted pursuant to Section II of this Agreement. The report will include the following information:
 - a. A copy of the results of the survey referenced in Section II.1., above, including a report of the five most popular sports at each high school and the number of students at each high school who indicated an interest in each sport, the number of surveys distributed and the number of responses, the grade levels of students who received the surveys, and the names and contact information for the individual(s) who evaluated the responses to the surveys.
 - b. An analysis of the results of any other recent surveys of students, if any, or other information collected from students using a method that is designed to reliably assess unmet athletic interests, and if applicable, abilities in interscholastic sports among female students.
 - c. For the 2013-2014 school year, rates of participation by female students in: interscholastic sports;
 - d. A summary of all requests made during the 2014-2015 school year, by or on behalf of female students, to add a particular sport or level of sport, or to elevate an existing club sport to interscholastic sport status, along with copies of any such written request not otherwise submitted through PSAL's automated, online system.

- e. Any other information that was considered by the NYCDOE as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of female students in its high schools.
- B. To demonstrate its compliance with the terms of Section III of this Agreement, the NYCDOE will submit the following information to OCR:
 - 1. By December 31, 2015, for the high schools identified pursuant to Section III.2. above, the NYCDOE will provide OCR with a detailed report that reflects the steps taken by the NYCDOE to create new opportunities for female students. This report will detail the expected timetable for the addition of new sports, levels of sports or newly-created club and/or other opportunities added pursuant to this Agreement. It will also describe how the creation of additional athletics opportunities taken pursuant to this Agreement will either (1) effectively accommodate the expressed interests and abilities of female students at the high school in question (*i.e.*, there remains no unmet interest and ability); or (2) elevate female students' participation rate in NYCDOE interscholastic athletics programs to be substantially proportionate to their rate of enrollment at the high school in question.
 - 2. By August 31, 2015 (for academic year 2014-2015), August 31, 2016, (for academic year 2015-2016), the NYCDOE will provide OCR with:
 - a. a copy of the roster for each team at each NYCDOE high school to which reporting requirement III.2 above applies;
 - b. information demonstrating the breakdown/enrollment by sex at each of these high schools; and
 - c. information regarding any increases to the size of its teams, as described by Section III.1.b. above, at each of these high schools.
- C. Other Reporting Requirements:
 - 1. By March 30, 2015, the PSAL will publish on its website the email address to be used for students, parents and others to request the addition of a new sport.
 - 2. By October 31, 2015, and on an annual basis until this Agreement is concluded, the NYCDOE will provide documentation to OCR that it has implemented Section IV.4 of this Agreement, including copies of the notice.
 - 3. By October 31, 2015, and on an annual basis until this Agreement is concluded, the NYCDOE will provide documentation to OCR demonstrating that it has provided the required training pursuant to Section IV.5 of this Agreement, including copies of the materials provided to the Athletic Directors and sign-in sheets showing attendance at the training.

VI. TERM OF AGREEMENT

The NYCDOE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the NYCDOE understands that during the monitoring of this Agreement, OCR may visit the NYCDOE schools, interview NYCDOE staff, and request such additional reports or data as are necessary for OCR to determine whether the NYCDOE has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.41(c)(1), which was at issue in this case. The NYCDOE understands that OCR will not close the monitoring of this Agreement until OCR determines that the NYCDOE has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.41(c)(1), which was at issue in this case. The NYCDOE understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Signed:

1/22/15

/S/

Date

Courtenaye Jackson-Chase
General Counsel
New York City Department of Education