

October 22, 2013

Michael Vanyo
Superintendent
Gloversville City School District
234 Lincoln Street
Gloversville, New York 12078

Re: Case No. 02-11-1077
Gloversville City School District

Dear Superintendent Vanyo:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Gloversville City School District. The complainant alleged that the District discriminated on the basis of sex in interscholastic athletics by failing to provide equal athletic opportunities to female students at the Gloversville High School (the School) in the following areas: (a) equipment and supplies; (b) scheduling of games and practice time; (c) coaching; and (d) locker rooms, practice and competitive facilities (Allegation 1). The complainant also alleged that in retaliation for her advocacy regarding Allegation 1, in or around October 2010, the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX: (a) disciplined her daughter (the Student) for allegedly using inappropriate language at a field hockey game; and (b) required the Student to attend field hockey practices and games while she was injured (Allegation 2).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 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 programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.41(a), specifically prohibits discrimination on the basis of sex in athletic programs offered by recipients of federal financial assistance from the Department. The regulation implementing Title IX, at 34 C.F.R. § 106.41(c), states that a recipient which operates or sponsors athletics teams must provide equal athletic opportunity for members of both sexes.

Additionally, the regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that:

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

In its investigation, OCR interviewed the complainant, the Student, witnesses the complainant identified, and District staff. OCR also reviewed documentation that the complainant and the District submitted. Additionally, OCR conducted an on-site inspection of the School's athletic facilities, and conducted a focus group with student athletes. OCR made the following determinations.

OCR determined that the School offered girls' and boys' cross county, girls' and boys' soccer, girls' and boys' basketball, girls' softball, boys' baseball, girls' field hockey, girls' volleyball, boys' football, girls' and boys' indoor and outdoor track, and girls' and boys' swimming and diving. The School also offered golf, bowling and tennis as coed sports. The District is a member of the Foothills League for all sports except indoor track and football. The District is a member of the Tri-County and Northwest Leagues for indoor track and football, respectively. All three leagues observe the rules of the New York State Public High School Athletic Association (NYSPHSAA).

Allegation 1:

The complainant alleged that the District discriminated on the basis of sex in interscholastic athletics by failing to provide equal athletic opportunities to female students at the School in the following areas: (a) equipment and supplies; (b) scheduling of games and practice time; (c) coaching; and (d) locker rooms, practice and competitive facilities.

A. Equipment and Supplies 34 C.F.R. § 106.41(c)(2)

To assess compliance with respect to this program component, OCR examined the quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies; including but not limited to uniforms, other apparel, and sport-specific equipment and supplies.

Quality, Amount, Suitability and Availability:

During OCR's on-site inspection, OCR determined that the quality of the boys' and girls' teams' equipment and supplies ranged from good to excellent, with no disparities favoring either girls or boys; and that all equipment and supplies were regulation and suitable for their intended use. OCR interviewed coaches and student athletes, none of whom identified any disparities between the boys' and girls' programs with respect to the quality, amount, suitability, or availability of

equipment and supplies. All coaches expressed satisfaction with the quality, amount, suitability and availability of equipment and supplies. OCR determined that the District provided equipment and supplies to each team in substantially equivalent amounts; no shortages were reported.

Maintenance and Replacement:

The coaches for all girls' and boys' teams stated that they never had any difficulty obtaining equipment and supplies for their respective teams. OCR determined that the District replaces uniforms for all teams every four years; except for the boys' and girls' swimming teams, whose suits are replaced annually. OCR determined that each coach is responsible for replacement of equipment and supplies using the team's annual budget. OCR determined that the District's Board of Education passes an annual budget, which includes allocations for equipment used by each athletic team.

Students were responsible for laundering their own uniforms and for the maintenance of any equipment which they personally owned. OCR found no discrepancies with respect to the District's maintenance of District-owned girls' and boys' athletic equipment. Based on the information provided, OCR concluded that the maintenance and replacement of equipment and supplies was substantially equivalent for both programs.

The complainant alleged that the boys' varsity baseball team had new playing equipment, while the girls' varsity and junior varsity softball teams' equipment was old and not replaced on a regular basis. The complainant also alleged that the boys' varsity baseball team had new uniforms and warm-up apparel, but the girls' varsity and junior varsity softball teams had no warm-up apparel. OCR inspected the boys' baseball and girls' softball teams' equipment and uniforms provided by the District.¹ OCR did not find any evidence to suggest that the softball equipment was not replaced on a regular basis, as the complainant alleged. Further, OCR determined that the District did not provide warm-up apparel to the boys' baseball team, as the complainant alleged. OCR determined that the teams had comparable quality equipment and uniforms, which were replaced on a comparable schedule.

The complainant alleged that there was a significant discrepancy in the School's equipment replacement budgets for girls' softball. Specifically, the complainant alleged that the School's equipment replacement budgets for girls' softball was listed at \$0 on the School's budget printouts, while a newspaper article stated that the District spent \$21,000 on boys' baseball. The complainant alleged that because of the School's failure to allow for equipment money for the softball team in the budget, XXX XXXXXXXXXX XXXXX asked her, XX XXX XXXXXXXXXX XX XXXXXXXXXX XXXX XXXXXXXXXX, to purchase softball equipment. OCR determined that the boys' baseball teams' budget was \$1,000, while the girls' softball teams' budget was \$800. XXX XXXXXXXXXX XXXXXXXXXX informed OCR that the budget for boys' baseball is \$200

¹ OCR determined that boys' varsity baseball players provide their own shoes, socks, gloves, and bats. Girls' softball players provide their own shoes and socks. Although the District provides some bats, some players buy their own bats; and the softball booster club recently bought three new bats for the team. OCR determined that the varsity girls' softball players provide their own catchers' equipment because they prefer it, but the District will provide it if the students do not provide their own.

more than softball because baseballs are more expensive than softballs, and baseballs wear out faster than softballs. OCR did not find any evidence to suggest that the District spent \$21,000 on boys' baseball, as the complainant alleged.² XXX XXXXXXXX XXXXX informed OCR that the softball teams' budget was sufficient to purchase all necessary items. XXX XXXXXXXX XXXX XXX XXX XXX no issues with equipment and supplies, and that XXX XXX XXXX XXXX to buy whatever the girls' softball teams need. XXX XXXXX XXXXXXXXXX XXX XXXX XXX XXXXXXXXXX funding from the booster club to purchase certain "extra" items for the team; namely, pop-up nets, three or four bats, and two batting tees. XXX XXXXXXXX XXXXXXXXXX XXX XXXX XXX XXX XXX XXXX that these extra items be provided by the District, nor did she request that the District increase XXX budget. OCR determined that coaches often request funds from the booster club for "extras" that they would like, but do not necessarily need, for their teams.

Based on the foregoing, OCR determined that there were no significant disparities favoring male athletes with respect to the provision of equipment and supplies.

B. Scheduling of Games and Practice Time
34 C.F.R. § 106.41(c)(3)

To assess compliance with respect to this program component, OCR considered the following factors:

1. Number of competitive events per sport;
2. Number and length of practice opportunities;
3. Time of day competitive events are scheduled;
4. Time of day practice opportunities are scheduled; and
5. Opportunities to engage in available pre-season and post-season competition.

In analyzing the first four factors, OCR's comparisons place particular emphasis on boys' and girls' teams of the same or similar sports, in the following areas:

- Number of games
- Days and times of games
- Number of practices
- Days and times of practices

If there is a significant disparity following comparison of the same or similar sports, OCR compares the remaining sports to determine whether any differences for the scheduling of these remaining teams may offset differences in scheduling for teams of the same or similar sport.

1. Number of Competitive Events Per Sport

²The District informed OCR that it spent approximately \$21,000 to upgrade the Gloversville Middle School field, used by the junior varsity softball team.

The District informed OCR that it has no written policies, procedures or criteria for establishing competitive schedules. OCR determined that the NYSPHSAA assigns all sports teams a start date, and the Foothill Council creates the competitive schedule for each sport, except football and indoor track, which are created by NYSPHSAA's Section II Football Committee and the Tri-County Indoor Track Committee, respectively. OCR determined that the head coach of each sport may then supplement the schedule with non-league events, within the limits prescribed by the NYSPHSAA.³

In assessing the number of competitive events per sport, OCR compared the number of regular season games for girls and boys competing in the same or similar sports.⁴ OCR determined that there were equivalent numbers of games for the varsity baseball and softball teams. OCR determined that there were more games for the girls' teams with respect to varsity and junior varsity soccer and varsity swimming and diving. OCR determined that there were more games for the boys' teams with respect to varsity basketball and junior varsity baseball. OCR determined that the disparities favoring boys' and girls' teams offset each other. All coaches and athletes interviewed considered the number of competitive events per sport sufficient. Accordingly, OCR determined that for same/similar sports, there was no significant disparity favoring girls' or boys' teams with respect to the number of competitive events scheduled. Therefore, OCR did not assess girls and boys competing in non-similar sports.

2. Number and Length of Practice Opportunities

The District has no written policies regarding the scheduling of practices. OCR determined that each head coach is responsible for planning and organizing his or her team's practice schedules. OCR compared the number and length of practice opportunities per week for girls and boys competing in the same or similar sports. OCR determined that the girls' and boys' varsity and junior varsity soccer teams, girls' and boys' varsity basketball teams, girls' varsity and junior varsity softball teams, boys' varsity and junior varsity baseball teams, and girls' and boys' varsity swimming and diving teams all practiced the same number of times per week (five), with the same length of practices (two hours). All coaches and athletes interviewed considered the number and length of practice sessions adequate. Accordingly, OCR determined that for same or similar sports, there was no significant disparity favoring girls' or boys' teams with respect to the number or length of practice opportunities. Therefore, OCR did not compare non-similar sports.

3. Time of Day Competitive Events and Practice Opportunities Are Scheduled

i. Time of Day of Competitive Events

The complainant alleged that varsity softball games are routinely scheduled for 4:15 p.m., when few spectators can attend. OCR determined that the head coaches and Athletic Director are responsible for scheduling interscholastic competitions in accordance with NYSPHSAA

³ The NYSPHSAA sets the maximum number of competitive events per team and season.

⁴ OCR excluded the golf, bowling, tennis, indoor and outdoor track, and cross-country teams from its analysis because these are "combined" or "coed" teams.

guidelines. OCR assessed the time of day during which competitive events were scheduled for boys and girls competing in the same or similar sports.

OCR determined that all school day games were scheduled Monday through Friday, and all weekend games were scheduled for Saturday. With respect to same or similar sports, OCR determined that the time of day of boys' and girls' competitive events was comparable, with the exception of varsity basketball and varsity softball/baseball.

With respect to varsity basketball, OCR determined that the boys' varsity team had 17 games scheduled for weekdays at 7:00 or 7:30 p.m., and 1 Saturday game at 7:00 p.m.⁵ In contrast, the girls' varsity basketball team had only 3 games scheduled for weekdays at 7:00 p.m., while they had 13 games scheduled for weekdays at 5:00 or 6:00 p.m. (one out of the 13 games was scheduled for 5:00 p.m., the remaining 12 games were at 6:00 p.m.) OCR inquired as to the reason for this difference. The District advised OCR that the District did not have a girls' JV basketball team, but had a boys' JV basketball team. Accordingly, the boys' JV games were scheduled for 5:00 or 6:00 p.m., while the boys' varsity games followed at 7:00 p.m. OCR determined that the same schedule was followed in previous years for girls, when the girls had a JV basketball team. The District asserted that the earlier time was preferable, because the team could finish earlier. XXX XXXXX XXXXXXXXXXXX XXXXX XXXXXX that since there was no girls' JV team, it was preferable to move the girls' varsity games up so the varsity team could get home earlier. XXX XXXXX XXXX XXXXXX that the competition schedule worked out fairly with the boys, and there were reasonable opportunities to compete before an audience, since parents were still able to make it to the games. Based on the above, OCR concluded that the District had a legitimate reason for the differences in scheduling of girls' and boys' varsity basketball games.

With respect to softball, OCR determined that the boys' varsity baseball team had four games scheduled for weekdays at 7:00 p.m., including three home games; while the girls' varsity softball team had only one away game scheduled for a weekday at 7:30 p.m.⁶ OCR determined that the varsity softball team was unable to schedule any home games during the evening because the District's softball field lacked lighting. OCR determined that the District's baseball field was equipped with lighting. Therefore, OCR determined that this was a disparity related to the facilities, which OCR will address under the facilities section of this document.

ii. Time of Day of Practice Opportunities

OCR determined that the head coaches are responsible for scheduling practice opportunities. OCR assessed the time of day practice opportunities were scheduled for boys and girls competing in the same or similar sports. OCR determined that all of teams practiced only on weekdays. OCR determined that overall, the time of day of practice opportunities were comparable for the boys' and girls' soccer, boys' and girls' varsity basketball, and boys' and girls' swimming and diving teams. OCR further determined that that varsity basketball teams,

⁵ The remaining game was on Saturday at 3:00 p.m.

⁶ The remaining boys' games were scheduled for 6:00 p.m. on one weekday, and 4:15 p.m. on 11 weekdays and 4 Saturdays. The remaining girls' games were scheduled for 4:15 or 4:30 p.m. on 15 weekdays and 4 Saturdays.

and varsity baseball and softball teams (when practicing indoors), rotated practice times on a weekly basis. Accordingly, OCR determined that with respect to the same and similar sports, there was no significant disparity in the time of day practices were scheduled. Therefore, OCR did not compare non-similar sports.

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

OCR determined that during the pre-season, all teams are permitted to scrimmage once they have met the required number of practices for that sport; NYSPHSAA provides guidelines for scrimmages in each sport. OCR determined that all teams that qualify have the opportunity to participate in post-season competition. No teams or coaches reported having been denied the opportunity to participate in such competition when qualified to do so. Therefore, OCR determined that boys' and girls' teams were afforded an equal opportunity to engage in pre-season and post-season competitions.

Based on the above, OCR determined that the District was in compliance with all parts of this program component, with the exception of the time of day of competitive events. Specifically, OCR determined that the District did not afford the girls' varsity softball team a similar opportunity to the boys' varsity baseball team with respect to the time of day of competitive events; however, OCR determined that this was due to the lack of light at the softball facility. Accordingly, OCR will address this disparity in the facilities section of this document.

C. Opportunity to Receive Coaching/Assignment and Compensation of Coaches **34 C.F.R. § 106.41(c)(5) and (6)**

To assess compliance with respect to this program component, OCR considered the following factors:

1. Availability – the relative availability of full-time, part-time and graduate or assistant coaches;
2. Assignment – the training, experience, and other professional qualifications of coaches; and
3. Compensation – allocation of funds for coaching to the girls' and boys' programs, taking into account the following seven factors: rate of compensation (per sport, per season); duration of contracts; conditions relating to contract renewal; experience; nature of duties; working conditions; and other terms and conditions of employment.

OCR policy notes that OCR's primary focus is the availability of coaches. Following that, the qualifications (assignment) of coaches will need to show a pattern of less qualified coaches being assigned to the program for students of one sex before lack of equivalence can be demonstrated. Depending on the particular individuals, it is possible for a coach with less experience to be as effective, or even more effective, than someone with more experience.

1. Availability of Coaches

The complainant alleged that the District favored boys' teams with respect to assignment and compensation of coaches. In support of this allegation, the complainant stated that there were no assistant coaches for softball.

OCR analyzed the number of coaches assigned to each team and the ratio of athletes to coaches.⁷ OCR determined that in total, boys' teams had 16 coaches assigned to 201 athletes for an overall ratio of 1:13, while girls' teams had 11 coaches assigned to 152 athletes for an overall ratio of 1:14.

With respect to the complainant's allegation that there were no assistant coaches for softball, OCR determined that there was XX XXXXXXXXXXXX XXXXX XXX XXXXXXXXXXX XXX XX XXXX. OCR determined that boys' baseball also had XXX XXXXXXXXXXXX XXXXX XXX XXXXXXXXXXX XXX XX XXXX. Accordingly, OCR determined that there was no significant disparity favoring boys' or girls' sports with respect to the availability of coaches.

2. Assignment

OCR examined the assignment of coaches to determine whether the District assigned more experienced coaches to one sex or the other, excluding coaches of coed and combined sports. OCR reviewed the average experience of coaches employed by the District. On average, the coaching staff of the boys' teams had 8.1 years of experience, whereas the coaching staff of the girls' teams had 5.6 years of experience, a difference of 2.5 years.

Head coaches in the boys' program had an average of 9 years of coaching experience at the high school level. Head coaches in the girls' program had an average of 7.8 years of coaching experience at the high school level, a difference of 1.2 years.

Assistant coaches in the boys' program had an average of 7.09 years of coaching experience at the high school level. Assistant coaches in the girls' program had an average of 3 years of coaching experience at the high school level, a difference of 4.09 years. OCR determined that XXX XXXXXXXXXXX XXXXX XXX XX years of experience, by far the most experience of any head or assistant coach. Excluding this one coach from the analysis, assistant coaches in the boys' program had an average of 4.5 years of experience; a difference of 1.5 years compared to the assistant coaches in the girls' program.

Based on the foregoing, OCR determined that there was a slight disparity favoring boys' teams with respect to experience of coaches. OCR determined that coaches for both boys' and girls' teams had sufficient knowledge and experience to coach their teams, and no athletes identified any problems with the experience level of the coaches assigned to their teams. OCR determined that the evidence did not indicate that coaches with less experience or qualifications were routinely assigned to either girls' or boys' teams. Accordingly, OCR determined that the slight disparity favoring boys' teams with respect to experience of coaches was not significant.

⁷ OCR excluded the golf, bowling, tennis, indoor and outdoor track and cross-country teams from its analysis, because these were "combined" or "coed" teams. OCR found no evidence that coaches spent more time with athletes of one sex on these teams.

3. Compensation

OCR examines the allocation of funds for coaching to the boys' and girls' programs. OCR also considers the rate of compensation, duration of contracts, conditions relating to contract renewal, experience, nature of duties, working conditions, and other terms and conditions of employment. If a disparity in the rate of compensation exists, OCR examines the compensation process to determine whether the differences were the result of nondiscriminatory factors. Among such factors, OCR considers the range and nature of duties, experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, the level of competition, or whether an individual possesses such an outstanding record of achievement as to justify an abnormally high salary. Where these or similar factors represent valid difference 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.

OCR determined that coaching salary stipends are determined by a salary schedule contained in the District's collective bargaining agreement. OCR determined that the base salary for coaches was \$4,700, and that salaries are adjusted upward or downward according to the sport. The District informed OCR that the salary schedule is determined by considering a series of factors, including: the average length of the sport's season; the number of assistant coaches for whom the head coach is responsible; the number of athletes in the sport's program; the number of sub-varsity programs within each sport; the relative level of responsibility of the coach within the sport's program; the percentage or amount of time spent in each program; and the technical knowledge and experience required to coach each sport. The District informed OCR that assistant coaches are paid 80% of the head coach's salary for each respective sport. The District informed OCR that any coach who coaches in the same sport for five consecutive years receives a 10% longevity increase in pay in the sixth year; once a coach reaches ten consecutive years in the same sport, the coach receives an additional pay increase of 10%.

OCR determined that the salary schedule for coaches was as follows: for girls' XXXXXXXXX, boys' baseball, girls' and boys' XXXXXX, girls' and boys' XXXXXXXXX XXX XXXXXX, and girls' XXXXXX XXXXXXX, \$4,230 (90% of base) for the head coach and \$3,384 for the assistant coach; for girls' and boys' XXXXXXXXXXXX and boys' XXXXXXXXX, \$4,700 (100% of base) for the head coach and \$3,760 for the assistant coach; and for girls' XXXXXXXXXXXX, \$3,290 (70% of base) for the head coach and \$2,632 for the assistant coach.

OCR determined that head coaches of boys' teams received \$20,069 (43% of the total \$47,094 paid to head coaches), while boys represented 58% of the School's athletic participation opportunities. OCR determined that girls' head coaches received \$27,025 (57% of the total paid to head coaches), while girls represented 42% of the School's athletic participation opportunities. Thus, OCR determined that the salaries received by the head coaches favored the girls' teams, with 42% of the participation opportunities receiving 57% of the compensation, and the boys' program with 58% of the participation opportunities only receiving 42% of the compensation. OCR determined that this discrepancy is a result of XXX XXXX XXXXXXXXXXX XXXX

XXXXX, who is also XXX XXXXXXXXXXX XXXXXXXXXXX, having volunteered to coach without compensation. Accordingly, OCR determined that the disparity is justified.

OCR determined that assistant coaches for boys' teams received \$39,404 (70% of the total \$55,910 paid to assistant coaches), and assistant coaches for girls' teams received \$16,506 (30% of the total \$55,910 paid to assistant coaches). Accordingly, OCR determined that the salaries received by the assistant coaches of boys' and girls' teams, when compared to the participants in each program, result in a significant advantage to the boys' program; specifically, boys account for 58% of the participation opportunities yet receive 70% of the compensation, whereas girls account for 42% of the participation opportunities yet receive only 30% of the compensation. OCR determined that this discrepancy is the result of the five assistant coaches assigned to the boys' football team, which represents three more assistant coaches than those assigned to any other girls' or boys' team. OCR has previously determined that 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. Excluding football, the assistant coaches' salaries for boys' teams totaled \$18,724, which would represent 53% of a total \$35,230 paid to assistant coaches for boys' and girls' teams, as compared to the boys' participation rate of 58%. Other than football, OCR determined that differences in salaries for assistant coaches of similar teams were based on their years of experience. Based on the foregoing, OCR found no significant disparity between the boys' and girls' programs with respect to the compensation of assistant coaches.

When the head coaches' and assistant coaches' salaries are combined, the boys' teams received \$59,473 (58% of the total coaches' compensation of \$103,004), and the girls' teams received \$43,531 (42% of total coaches' compensation of \$103,004). The salaries received by the head and assistant coaches of the boys' and girls' teams, when combined, are proportional to the participants in the program. The boys' program, representing 58% of the participation opportunities, receives 58% of coaching compensation, and the girls' program, representing 42% of the participation opportunities, receives 42% of the coaching compensation.

OCR found no disparities between girls' and boys' coaches with respect to the rate of compensation, duration of contracts, conditions relating to contract renewal, experience, nature of duties, working conditions, or other terms and conditions of employment. None of the coaches received reduced teaching loads or was relieved of any other duties during the season.

Based on the foregoing, OCR determined that there is no significant disparity favoring male athletes with respect to the availability, assignment and compensation of coaches.

D. Provision of Locker Rooms, Practice and Competitive Facilities
34 C.F.R. § 106.41(c)(7)

To assess compliance with this program component, OCR considered the following factors:

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.

1. Quality of Practice and Competitive Facilities

The complainant alleged that the boys' varsity baseball field was a "well-maintained and highly decorated field," but was unavailable to any girls' sports. She further alleged that the girls' varsity and junior varsity softball teams instead practiced and competed at inferior fields. Specifically, the complainant alleged that:

- The Gloversville Little League fields (the GLL fields), where the varsity and junior varsity softball teams practiced and competed, had insufficient dirt and inadequate drainage, which resulted in flooding and the cancellation of games; while the varsity baseball field had no drainage problems.
- The Gloversville Middle School field, where the junior varsity softball team played its last few games of the season, had inadequate drainage.
- The boys' varsity baseball field had protected dugouts with appropriate seating for players, bleachers for fans, a restroom, high power lighting and a concession stand; while the GLL fields lacked appropriate dugouts, bleachers, available restrooms,⁸ lighting and an open concession stand.⁹

OCR determined that the District utilized athletics facilities located at the District's high school, middle school, Boulevard Elementary School, Park Terrace Elementary School, and the GLL fields. During the onsite visit, OCR staff inspected all of these facilities.

Teams of the Same or Similar Sport:

With regard to boys' and girls' teams of the same or similar sports,¹⁰ OCR determined that the boys' and girls' varsity and JV swimming and diving teams used the same facility for practice and competition (Middle School Pool). Additionally, the boys' and girls' varsity basketball teams used the same facility for practice and competition (Middle School Gym).¹¹

⁸ The complainant stated that there is a restroom at the GLL fields, but the key was not provided to the XXXXXXXX XXXXX; therefore, the restroom was unusable by players and fans. The complainant stated that there is a "port-a-potty" at the GLL fields that the students can use, but it is located across the park from the softball field.

⁹ The complainant acknowledged that there is a concession stand at the GLL fields, but alleged that it was never open during games.

¹⁰ OCR excluded the golf, bowling, tennis, indoor and outdoor track, and cross-country teams from its analysis, because these were "combined" or "coed" teams that used the same facilities at the same time.

¹¹ The boys' JV basketball team also used the Middle School Gym for practice and competition; there was no girls' JV basketball team. The boys' freshman basketball team used the gym at Park Terrace Elementary.

The boys' and girls' varsity soccer teams both used the High School Outdoor Facility for competition; however, while the girls' varsity soccer team used the High School Outdoor Facility for practice, the boys' varsity soccer team used a facility at Boulevard Elementary School for practice. The girls' JV soccer team played most of its games at the Boulevard Elementary School, and used the High School Outdoor Facility for practice.¹² The boys' JV soccer team used a facility at Boulevard Elementary for practice and competition. XXXX XXX XXXX XXX XXXXX XXXXXX XXXXXXXX described the field at the High School Outdoor Facility as "excellent" for soccer. XXX XXXXX XX XXXXXXX XXXXX described the JV practice field at the high school as "excellent" for soccer. OCR inspected these facilities and concurs in that assessment. The High School Outdoor Facility had a concession stand, press box, lights, and a public address system. OCR determined that the facilities at Boulevard Elementary were in adequate condition. The Boulevard Elementary field had benches for home and away teams. OCR determined that the quality of the surfaces of the fields were all comparable at both the high school and Boulevard Elementary. Both boys' and girls' JV teams competed at Boulevard, and both boys' and girls' varsity teams competed at the high school, so neither sex was disadvantaged with respect to facilities.

The boys' varsity and JV baseball teams used the baseball facility at Park Terrace Elementary School (Husky Field) for practice and competition. OCR determined that this field was in excellent condition. It is composed of grass and sand, and has the following features: covered dugouts, lights, concession stand, electronic scoreboard, storage sheds, a batting cage, fencing and bleachers. XXX XXXXXXXXXX XXXXXXXXXX informed OCR that they have tarps to protect the mound and home plate, which were donated by the booster club. The girls' varsity softball team used the softball facility at the GLL Fields for practice and competition. The girls' JV softball team practiced and competed at the Boulevard Elementary School at the beginning of the school year, and then moved its practice and competition to the GLL fields, except for two games at the end of the season which were played at the middle school once its field was completed. OCR determined that the quality of the fields at GLL fields was good, although the only amenity at the field was two sets of benches. XXX XXXXX XXXXXXXXXX XXXXX informed OCR that the field had a grass infield, which created a safety concern because a grass infield can cause "bad hops." OCR determined that the GLL softball field has no lighting, so games must be scheduled during daylight hours. OCR determined that there are restrooms located at the concession stand behind the baseball field, which are fairly far from the softball field. XXX XXXXX informed OCR that she had a key to the restrooms. There is also a "port-a-potty" at the GLL fields, which is fairly far from the softball field. XXX XXXXXXXXXX XXXXX informed OCR that the softball field is adequate, but has inadequate drainage. OCR determined that the softball field has a manual scoreboard, fencing, bleachers, dugouts, and a concession stand that is not open during softball games. OCR determined that there was no locker room facility at the GLL fields.¹³

Teams of Dissimilar Sports:

¹² The girls' JV soccer team played its last two games at the middle school after renovations were completed on a facility there.

¹³ Players informed OCR that they changed in the dugouts, but stated that the dugouts lacked privacy.

With regard to boys' and girls' teams of dissimilar sports, OCR determined that the girls' varsity field hockey team competed at the High School Outdoor Facility and practiced at the Middle School Outdoor Facility. The girls' JV field hockey team practiced and competed at the Middle School Outdoor Facility. XXX XXXXX XXXXXX XXXXX stated that the competition field at the high school had drainage issues and could become submerged following heavy rain. She further stated that the length of the grass, which is crucial for the ball to travel at the right speed, is inappropriate. Witnesses informed OCR, and OCR confirmed during its on-site investigation that there were tufts of grass on the field that caused a field hockey ball to jump dangerously. The girls' varsity and JV field hockey teams practiced on the middle school field, and the JV team also competed on this field. OCR determined that the field at the middle school is in adequate condition; however, XXX XXXXX XXXXXX XXXXX reported the same problems with the middle school field hockey field that were reported with respect to the high school field. Specifically, that it has drainage issues and can become submerged following heavy rain; and the length of the grass is inappropriate.

OCR determined that the girls' varsity and JV volleyball teams practiced and competed at the Middle School Gym. OCR determined that the gym is in adequate condition.

OCR determined that the varsity and JV football teams used the football field at Park Terrace Elementary School (Husky Field) for competition. OCR determined that this field is in excellent condition. The varsity and JV football teams practiced on a different field at Park Terrace Elementary School, which is in adequate condition.

Based on all of the above, OCR determined that the following constituted significant disparities in the quality of practice and competitive facilities afforded to boys and girls: the drainage issues for the girls' softball and field hockey teams; the lack of lighting and the proximity of the restrooms to the field for the girls' softball teams; and the failure to properly maintain the grass on the girls' field hockey fields.¹⁴ During the course of OCR's investigation, the District remedied the drainage issue for the girls' field hockey teams, and provided new softball facilities that remedy the issue regarding the proximity of restrooms to the field for girls' softball teams.¹⁵ OCR determined that the District provided evidence demonstrating that these issues have been resolved; however, OCR will obtain a resolution agreement to address the drainage issue and lack of lighting for the girls' softball teams, and the maintenance of grass on the girls' field hockey fields.

2. Availability of Practice and Competitive Facilities

In accordance with OCR policy, availability of facilities refers to the location of the facilities relative to the school the athletes attend. OCR determined that two boys' teams (varsity and junior varsity cross country), and four girls' teams (varsity and junior varsity soccer, and varsity

¹⁴ The District provided OCR with its plan for maintaining appropriate grass height for the girls' field hockey fields, which it will implement during school year 2013-2014.

¹⁵ The District informed OCR that for school year 2013-2014, the girls' junior varsity softball team will use the field at Gloversville Middle School, and the girls' varsity softball field will play night games at a Meco Ballpark, a private field in Northville, New York, rented by the District for that purpose.

and junior varsity cross country) used facilities at the high school for both practice and competition, and one boys' team (varsity soccer), and one girls' team (varsity field hockey) used facilities at the high school for competition only. OCR determined that six boys' teams (varsity and junior varsity basketball, varsity and junior varsity swimming and diving, and varsity and junior varsity indoor track), and eight girls' teams (varsity basketball, varsity and junior varsity swimming and diving, varsity and junior varsity indoor track, varsity and junior varsity volleyball, and junior varsity field hockey) used facilities at the middle school for both practice and competition, and one girls' team (varsity field hockey) used facilities at the middle school for practice only. OCR determined that the middle school is adjacent to the high school.

OCR determined that one boys' team (junior varsity soccer) used facilities at the Boulevard Elementary School for both practice and competition, one boys' team (varsity soccer) used facilities at Boulevard Elementary School for practice only, and one girls' team (junior varsity softball) used facilities at this school for part of the school year. OCR determined that Boulevard Elementary School is approximately 2.0 miles from the high school. OCR determined that six boys' teams (varsity and junior varsity football, varsity and junior varsity baseball, and varsity and junior varsity outdoor track) and two girls' teams (varsity and junior varsity outdoor track) used facilities at Park Terrace Elementary School for both practice and competition. OCR determined that Park Terrace Elementary School is approximately 1.5 miles from the high school. OCR determined that one girls' team (varsity softball) used facilities at the GLL fields for both practice and competition, and one girls' team (junior varsity softball) used facilities at the GLL fields for practice for part of the school year. OCR determined that the GLL fields are approximately 2.0 miles from the high school.

Based on the above, OCR determined that although more boys' teams had to travel from the high school/middle school to facilities, several of these teams traveled to Husky Field at Terrace Park Elementary School; and, Husky Field was an extremely high quality facility. Accordingly, OCR determined that any disparities in availability were off-set by quality.

3. Exclusivity of Use

In accordance with OCR policy, exclusivity of use refers to whether a team had exclusive use of a facility at the time of the practice session or competition. The complainant alleged that the XXXXXXXX XXXXX was informed that there was no available practice space in the gym for the softball team, because gym space was already promised to other teams.¹⁶ OCR found no evidence that the XXXXXXXX XXXXX was ever informed that there was no available space in the gym for the softball team, and OCR determined that the softball and baseball teams shared the gym time equally.

No coach reported any conflict regarding use of competition or practice facilities with other district teams or local athletics programs. OCR determined that the boys' and girls' basketball teams rotated their use of the gym during the winter season. During the early spring, the baseball, softball, and indoor and outdoor track teams rotated use of the gym. The varsity boys'

¹⁶ OCR determined that the softball team practices indoors at the beginning of the season, and then moves to an outdoor field when the weather gets warmer.

and girls' soccer and varsity girls' field hockey teams rotated their use of the high school competition field in the fall. Additionally, the varsity and junior varsity girls' soccer teams rotated their use of a high school practice field with the modified football team. The boys' and girls' swimming and diving teams shared the pool facilities, but no conflict existed because the girls' season is in the fall and the boys' season is in the winter. The boys' football team shared the practice football field with the outdoor track team, but no conflict existed because the boys' football season is in the fall and the outdoor track season is in the spring. Accordingly, OCR determined that all teams had exclusive use of District facilities during their respective practices and competitions.

4. Maintenance and Preparation of Practice and Competitive Facilities

The complainant alleged that the District's building and grounds staff spent every morning preparing the baseball field for practices and games, but only visited the GLL fields once or twice during the softball season. OCR determined that District staff prepare and maintain athletic facilities for all teams, regardless of sex, including the softball field at the GLL fields. XXXXXXXXXXXX XX XXX XXXXXXXXXXXX XXXXXXXXXXXX XXX XXXXXXXX XXXXX informed OCR that there is no maintenance schedule for the facilities, and no facility takes precedence over another. He stated that XX XXX XXX XXXXX first prepare any facility needed for competition that day, and then visit the remaining facilities in no particular order. He further informed OCR that the XXXXXXXXXXXX XXXXXXXXXXXX provides him with a schedule of games, and he ensures that the buildings and grounds staff prepares all of the fields and facilities prior to games. The District denied that the building and grounds staff spent every morning preparing the baseball field for practices and games, but only visited the GLL fields once or twice during the spring 2011 softball season, as the complainant alleged. OCR did not find, and the complainant did not provide any evidence to contradict the District's assertion. Therefore, OCR found no sex-based difference in the maintenance and preparation of the facilities.

5. Availability and Quality of Locker Rooms

OCR inspected the eight locker rooms used by the School's athletic teams, located at the high school, middle school, and Park Terrace Elementary School.¹⁷

The coaches described the quality of the locker rooms at the high school and the Park Terrace Elementary School as excellent. Coaches also described the quality of the middle school pool locker rooms as excellent. Coaches described the quality of the middle school gym locker rooms as adequate. OCR determined that the boys' and girls' locker rooms at the middle school and the Park Terrace Elementary School, and the boys' and girls' pool locker rooms, mirror each other.

OCR's inspection of the eight locker/team rooms in the District revealed that the rooms are comparable for boys and girls with respect to quality, number and size of lockers, and the size of the rooms. OCR determined that all boys' and girls' teams, except the boys' baseball teams and the girls' softball teams, have meaningful access to a locker room at the facility at which they

¹⁷ OCR determined that locker rooms are available to male and female athletes at Boulevard Elementary School, but the athletes opt not use them.

practice and/or compete. XXX XXXXXXXXXX XXXXX informed OCR that the lockers at the Park Terrace Elementary School are too far from the field – specifically, players would need to cross the width of the football field or go around it – so the team does not use them. OCR determined that there are no locker rooms at the GLL fields that the girls’ varsity softball team can use. Accordingly, OCR determined that disparities off-set regarding the availability and quality of locker rooms.

Allegation 2:

The complainant alleged that in retaliation for her advocacy regarding Allegation 1, the XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX: (a) disciplined the Student for allegedly using inappropriate language at a field hockey game; and (b) required the Student to attend field hockey practices and games while she was injured. In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant’s protected activity; (3) whether the complainant or injured party suffered an adverse action contemporaneous with, or subsequent to, the recipient’s learning of the complainant’s involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in a protected activity beginning in school year 2009-2010, by complaining to District staff (including the Superintendent, XXXXX XX XXXXXXXXXXXXX, and XXXXXXXXXX XXXXXXXXXX) that the District was violating Title IX with respect to girls’ athletics in the District. OCR determined that the District was aware of the complainant’s protected activity.

With respect to Allegation 2(a), the complainant alleged that XXX XXXXXXXXXX XXXXXXXXXX conducted an investigation after the Student “supposedly used vulgar language at a field hockey game,” and found no evidence that the Student had done so. The complainant alleged that XXX XXXXXXXXXX XXXXXXXXXX nevertheless suspended the Student from 10% of her next season’s sport (XXXXXXX XXXXX).

OCR determined that the Student was on the School’s junior varsity field hockey team during fall 2010; and the School’s outdoor track team during winter 2011. OCR determined that on or about October 19, 2010, one of the Student’s teammates was injured during a game, and the Student commented several times that a player for the opposing team “fucking did it on purpose” (Comment 1). OCR determined that XXX XXXXXXXXXX XXXXXXXXXX XXXXX XXXXXXXXXX XXXXX XXX XX XXXXX told the Student to calm down and be respectful; however, the Student was not disciplined for making Comment 1. XXX XX XXXXX stated that she later learned from another coach that after being reprimanded, the Student said that she wanted to “punch XXX XX XXXXX in the face” (Comment 2). OCR determined that XXX XXXXXXXXXX XXXXXXXXXX advised XXX XXXXXXXXXX XXXXX XXXXXXXXXX XXXXX XXX

XXXXXXXX XXXXX that she should address Comment 2 with the Student. XXX XXXXXXXX XXXXX stated that she then spoke with the Student and the complainant about Comment 2, and the Student denied making the comment.¹⁸ XXX XXXXXXXX XXXXX stated that because she was unable to verify that the Student made Comment 2, the Student was not disciplined for it. Additionally, OCR determined that the Student was not disciplined for using inappropriate language at any other field hockey game during the fall 2010 season. Accordingly, OCR determined that the Student was not disciplined for using inappropriate language at a field hockey game, as the complainant alleged.

OCR determined that on XXXXXXXX XX, 2010, the XX XXXXX informed the Athletic Director that earlier that day, the Student approached her and yelled “how dare you say that about me,” accused her of telling the team and XXX XXXXXXXX XXXXXXXX that the Student is “a f’ing asshole,” and told XXX XX XXXXX that she was intentionally trying to get her in trouble.¹⁹ OCR determined that the District held an “athlete hearing” on XXXXXXXX XX, 2010, to discuss the incident of XXXXXXXX XX, 2010; the Student’s parents, XXX XXXXXXXX XXXXXXXX, the Assistant Superintendent, and XXX XXXXXXXX XXXXX attended. OCR determined that by letter, dated October 28, 2010, XXX XXXXXXXX XXXXXXXX informed the Student’s parents that the Student’s conduct during the incident on October 21, 2010, violated the “District Code of Conduct and Training Rules/Activity Rules” (the Activities Policy) and the “Section II Sportsmanship Policy – Athletes” (the Sportsmanship Policy).²⁰ XXX XXXXXXXX XXXXXXXX further informed the Student’s parents that in accordance with the Activities Policy, the Student would be suspended from 10% of regular scheduled games in the next season that she participated in, but would still be able to practice and would be required to travel with her team while serving her suspension.²¹ OCR determined that the Student was suspended from one XXXXXXXX XXXXX XXXX, out of fourteen total XXXXX.

OCR determined that the District disciplined the Student in accordance with its Activities Policy. OCR determined that the District disciplined a similarly situated student, whose parent/legal guardian had not engaged in protected activity, in a similar manner. Specifically, during school

¹⁸ The Student acknowledged to OCR that she “probably” made Comment 2.

¹⁹ The complainant confirmed that the Student confronted XXX XX XXXXX and asked why XXX XX XXXXX was “causing all this trouble for her” and “was requesting XXX XX XXXXX to respond.” The complainant denied that the Student did so in a “yelling or disrespectful manner.”

²⁰ Specifically, XXX XXXXXXXX XXXXXXXX stated that the Student violated the following requirements of Level I of the Activities Policy: “(1) Be respectful to all individuals involved in the activity; (2) Demonstrate appropriate behavior at all times as a representative of the team, school and community; and (3) Demonstrate good sportsmanship, in all circumstances.” XXX XXXXXXXX XXXXXXXX further stated that the Student violated the second provision of the Sportsmanship Policy, which states “[m]aintain self-control,” and [d]o not allow your temper to distract you from the fundamentals of good sportsmanship.” Both Policies are set forth in the District’s “Interscholastic Athletic Guide.”

²¹ The complainant alleged that she and the Student did not sign the form consenting to the code of conduct set forth in the Interscholastic Athletic Guide and therefore should not be bound by its rules; however, the District provided OCR with a copy of the consent form signed by both the Student and parent. The District stated that the complainant’s signature matched the signature on other documents the complainant had signed and submitted to the District.

year 2009-2010, a male XXXXXXXX XXXXXXXXXXXX player (Student 2) posted inappropriate comments on his Facebook page about his head coach, which the District determined constituted a Level I offense pursuant to the Activities Policy. OCR determined that Student 2 was suspended from the XXXXXXXXXXXX team for five days, which resulted in his suspension from two games out of nineteen, or 10.5% of the total games for the season. OCR determined that Student 2 was also required to remove the comments from his Facebook page and write a letter of apology to his coach.

Based on the foregoing, OCR determined that the District had a legitimate, non-retaliatory reason for disciplining the Student for her conduct on XXXXXXXX XX, 2010; namely, the Student violated the Activities Policy. OCR determined that the proffered reason was not a pretext for a retaliatory motive, because the District imposed the discipline consistent with the Activities Policy, and the District treated a similarly situated student, whose parent(s) had not engaged in protected activity, in a similar manner.²² Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that XXX XXXXXXXX XXXXXXXX retaliated for her advocacy by disciplining her daughter for allegedly using inappropriate language at a field hockey game. Accordingly, OCR will take no further action with respect to Allegation 2(a).

With respect to Allegation 2(b), the complainant alleged that in or around early October 2010, the Student was unable to play field hockey because of an injury, so the complainant provided the District with "disability forms." The complainant alleged that on October 3, 2010, XXX XXXXXXXX XXXXX XXX XXXXXXXXXXXX XXXXXXXXXXXX contacted her after the Student arrived late to a game on October 2, 2010, to tell her that the Student should be attending games and practices. The complainant alleged that other injured athletes were not required to attend games and practices.

OCR determined that the Student was injured and unable to play field hockey beginning in early October 2010, and continuing through XXX XXX XX XXX XXXXXXXX. OCR determined that the District does not maintain a written policy regarding the participation of injured athletes in team practices and/or games; however, XXX XXXXXXXX XXXXX informed OCR that as an unwritten rule, injured athletes typically attend their team's practices and games. XXX XXXXXXXX XXXXX informed OCR that at the instruction of XXX XXXXXXXXXXXX XXXXXXXXXXXX, she called the complainant and stated that they would like to have the Student attend practices and games while injured. XXX XXXXXXXX XXXXX stated that the complainant informed her that the Student was not attending because she was at physical therapy. OCR determined that the Student did not attend practices and games while she was injured, and received no disciplinary consequence as a result.

Based on the foregoing, OCR determined that the Student was not subjected to an adverse action. OCR defines an adverse action as an action that affects a person's education, work or well-being in an unwarranted, serious, lasting, and usually tangible manner, i.e., something that is more than

²² Additionally, OCR did not find and the complainant did not provide any evidence that XXX XXXXXXXXXXXX XXXXXXXXXXXX applied the Sportsmanship Policy to the Student because of any retaliatory motive; and OCR determined that the application of the Sportsmanship Policy did not result in harsher discipline for the Student, as compared to Student 2.

a transient, unpleasant incident. OCR did not find and the complainant did not provide any information to indicate that XXX XXXXXXXX XXXXXXXX request for the Student to attend games and practices while injured, with no consequence for failure to attend, affected the Student in an unwarranted, serious, lasting or tangible manner. In the absence of any adverse action, OCR will not proceed further with a retaliation analysis. Accordingly, OCR will take no further action with respect to Allegation 2(b).

On September 26, 2013, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the resolution agreement, OCR will resume its 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 may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact Terri Russo, Compliance Team Attorney, at (214) 661-9687, or terri.russo@ed.gov; or Emma Kim, Senior Compliance Team Attorney, at (617) 289-0159 or emma.kim@ed.gov.

Sincerely,

Timothy C. J. Blanchard

Encl.