



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II

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NEW JERSEY  
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December 9, 2015

Dr. Robert Previti  
Superintendent  
Mainland Regional High School District  
1301 Oak Avenue  
Linwood, New Jersey 08221

Re: Case No. 02-13-1141  
Mainland Regional High School District

Dear Dr. Previti:

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 Mainland Regional High School District. The complainant alleged that the District discriminated against female students, on the basis of their sex, by failing to effectively accommodate their interests and abilities in athletics during school year 2012-2013 (Allegation 1). The complainant further alleged that the District discriminated against female students, on the basis of their sex, by failing to provide equal athletic opportunities in the following component areas during school year 2012-2013: (a) equipment and supplies, and (b) the opportunity to receive coaching, and the assignment and compensation of coaches (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 financial assistance from the Department. The regulation implementing Title IX, at 34 C.F.R. § 106.41(c), states that a recipient that operates or sponsors athletic teams must provide equal opportunity for members of both sexes.

OCR examined whether the District provides male and female students an equal opportunity to participate in its athletics program by effectively accommodating their interests and abilities, in accordance with the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1). The regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

The regulation implementing Title IX also requires a recipient to provide equal athletic opportunity for members of both sexes in the provision of equipment and supplies (34 C.F.R. §106.41(c)(2)); and, the opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)).

### **BACKGROUND:**

The Mainland Regional High School District is a regional public high school district located in New Jersey, serving grades nine through twelve. When OCR initiated this investigation during school year 2012-2013, the District offered 13 boys' sports (baseball, basketball, crew, cross-country, football, lacrosse, soccer, swimming, diving, tennis, winter/indoor track, spring/outdoor track, and wrestling) and 12 girls' sports (softball, basketball, crew, cross-country, field hockey, lacrosse, soccer, swimming, diving, tennis, winter/indoor track, and spring/outdoor track). The District also offered one co-ed sport (golf). The District is a member of the Cape Atlantic Conference, which observes the rules of the New Jersey State Interscholastic Athletic Association (NJSIAA).

In its investigation, OCR interviewed the complainant and District staff. OCR reviewed documentation and other information from the NJSIAA and the District relative to school years 2010-2011, 2011-2012, 2012-2013, 2014-2015, and 2015-2016. OCR made the following determinations.

### **Facts and Analysis**

#### **I. Accommodation Of Athletic Interests And Abilities - 34 C.F.R. § 106.41(c)(1)**

OCR examined whether the District provides male and female students an equal opportunity to participate in its interscholastic athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1). OCR considered whether the selection of sports and levels of competition effectively accommodated the interests and abilities of members of both sexes.

OCR applies the following three-part test (“Three-Part Test”) to assess whether an institution is providing equal participation opportunities for individuals of both sexes:

1. Whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

2. Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the school district can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex; or
3. Where the members of one sex are underrepresented among interscholastic athletes and the school district cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

If an institution meets any one part of the Three-Part Test, OCR will determine that the institution provides each sex with equitable opportunities to participate. Each part of the Three-Part Test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. If an institution's athletics program also equitably provides each sex with the level of competition reflective of their respective abilities, OCR will determine that the institution is effectively accommodating athletic interests and abilities.

*Part One: Substantially Proportionate Participation Opportunities*

Under Part One of the Three-Part test, where a school district provides interscholastic athletic participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments, OCR will find that the school district is providing nondiscriminatory participation opportunities for individuals of both sexes. OCR will also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team; i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an interscholastic team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number that might vary by institution.

To establish whether competitive opportunities were substantially proportionate to enrollment, OCR compared the number of male and female students enrolled in grades 9-12 with the number of athletic opportunities available to each sex within the District's athletic program. In determining participation opportunities, OCR counted the number of actual athletes participating in each competitive sport.<sup>1</sup>

OCR obtained enrollment and athletic participation data from the District for school years 2010-2011, 2011-2012 and 2012-2013. In comparing enrollment and athletic participation, OCR examined the rosters for all sports offered at the District's high school, which included freshman,

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<sup>1</sup> For purposes of determining the number of athletic opportunities, OCR counts all participants who are receiving institutionally sponsored support normally provided to athletes; participating in organized practice sessions and team meetings and activities on a regular basis; and, listed on the squad list. For this analysis, the same athlete who participates on more than one team is counted as a participant on each team. In order to determine accurate participation numbers for male and female athletes, OCR scrutinizes the squad lists and other information provided by a recipient and reviews the information with coaches from the various teams.

junior varsity and varsity teams. OCR then compared, by sex, the student enrollment in the District to the number of athletic opportunities available to students. To compile this information, OCR relied upon NJSIAA eligibility lists; and the varsity award information<sup>2</sup> and participation numbers that the District submitted.<sup>3</sup>

During school year 2010-2011, there were 769 boys (51%) and 749 girls (49%) enrolled in the District High School. The District provided a total of 886 participation opportunities in its interscholastic athletics program, 486 (or 55%) athletic opportunities for its male students and 400 (or 45%) athletic opportunities for its female students. During school year 2010-2011, girls had 4% fewer athletic opportunities than did boys, given their respective enrollments. Exact proportionality would have required the District to add approximately 67 athletic opportunities for girls for that school year.

During school year 2011-2012, there were 750 boys (52%) and 704 girls (48%) enrolled in the High School. The District provided a total of 818 participation opportunities in its interscholastic athletics program, 465 (or 57%) athletic opportunities for its male students and 353 (or 43%) athletic opportunities for its female students. In school year 2011-2012, girls were underrepresented by 5%, and exact proportionality would have required the District to add approximately 76 athletic opportunities for that school year.

During school year 2012-2013, there were 712 boys (52%) and 663 girls (48%) enrolled in the High School. The District provided a total of 804 participation opportunities in its interscholastic athletics program, 460 (or 57%) athletic opportunities for its male students and 344 (or 43%) athletic opportunities for its female students. In school year 2012-2013, girls were underrepresented by 5%, and exact proportionality would require the District to add approximately 81 athletic opportunities for that school year. These calculations demonstrate a substantial disparity between the number of athletic opportunities afforded girls and those afforded boys, given their respective enrollments at the District. The creation of additional girls' athletic opportunities to eliminate the disparity would lead to the addition of multiple girls' teams.<sup>4</sup>

Because OCR concluded that participation opportunities for girls at the District were not substantially proportionate, it analyzed whether the District could establish compliance under Part Two of the test.

### Part Two: History and Continuing Practice of Program Expansion

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<sup>2</sup> The varsity award lists contained all students participating in all levels of the sport, not just the varsity roster. The District's varsity awards lists listed and summarized participation numbers for all three school years. Although the District maintained that the varsity lists contained the same information as was submitted to the NJSIAA, OCR determined that it did not (e.g., crew was omitted entirely). Additionally, the District was unable to submit the NJSIAA eligibility lists to OCR for school years 2010-2011 and 2011-2012; therefore, OCR relied on the participant information submitted by the District for all three years.

<sup>3</sup> The District submitted information concerning the team's rosters, including the eligibility lists submitted to the NJSIAA for school year 2012-2013.

<sup>4</sup> During negotiations, the District provided updated enrollment and participation information for school year 2014-2015.

Under Part Two of the Three-Part test, a school district may show that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. In effect, Part Two looks at a school district's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

OCR considers the following factors, among others, as evidence of a school district's history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- A record of adding interscholastic teams, or upgrading teams to interscholastic status, for the underrepresented sex;
- A record of increasing the numbers of participants in interscholastic athletics who are members of the underrepresented sex; and
- An affirmative response to requests by students or others for addition or elevation of sports.

The District stated that it had no written documentation concerning the addition of teams prior to school year 2012-2013. The District stated that boys and girls lacrosse were added at least eight years ago, in or around school year 2004-2005; the girls' team being added about one year before the boys' team. Diving and swimming became separate teams for both boys and girls during school year 2012-2013. Diving events previously were part of a swim meet; however, since not all schools in the league had diving teams, the league decided to hold diving as a separate event. The District began offering co-ed volleyball as a club sport in school year 2013-2014; and, beginning with school year 2015-2016, the District offers girls' volleyball as an interscholastic sport. The District has not eliminated any girls' sports teams, or any athletics teams, in the past 10 years. The District did not provide any specific information regarding increasing the numbers of participants who are members of the underrepresented sex, other than the addition of teams generally to the District's athletics program.

OCR's investigation revealed that during school year 2011-2012, a number of female students xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx team expressed an interest in the creation of a xxxxxxxx xxxxxx team. The xxxxxxxxxxxx stated that during school year 2012-2013, the same girls approached him again about creating a xxxxxxxxxxxx team. He advised OCR that during school year 2011-2012 and 2012-2013 there were approximately xxxxxxxxxxxxxxxxxxxxxxxxxxxx. The xxxxxxxxxxxx stated that he could not do anything in response to the inquiry to create a girls' xxxxxx during school year 2012-2013, because it was the same xxxxxxxxxxxx girls who had expressed interest during the prior year and there was not enough interest to support a separate team. The xxxxxxxxxxxx stated that he sought information from a listserv of approximately 400 high schools regarding the criteria that other high schools used to establish a xxxxxxxx; he concluded the School was "right on the edge", but did not have a sufficient number of girls to sustain a separate program. The xxxxxxxxxxxx stated that if the District established a separate girls' xxxxxx and one girl got injured, the District would not have a sufficient number of girls

on the team to compete and that would jeopardize the entire team. Despite the expressed interest, no separate girls' xxxxxx was added to the girls' sports program.

Based on all of the above, OCR determined that although the District has added some girls' teams since school year 2004-2005, it also added boys' teams during this time period; and, although the District received a request to add a girls' xxxxxxxx, to date the District has not added the team. Accordingly, OCR determined that the District does not have a history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex.

OCR considers the following factors, among others, as evidence that may indicate a continuing practice for program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- The current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams), and the effective communication of the policy or procedure to students; and,
- The current implementation of a plan of program expansion that is responsive to developing interests and abilities.

The District stated that it does not have written policies, procedures or criteria for determining whether sports will be added to the boys' and girls' interscholastic athletics programs. The District stated that in determining whether to add boys' or girls' interscholastic athletic programs, it considers whether there is interest and whether the addition is possible from a budgetary standpoint. The District stated that it would consider the sport on a club level first to generate interest and make sure it had the numbers to sustain an additional sport, but also look at the sport from a league perspective; i.e., whether the sport is offered by the NJSIAA and the Cape Atlantic League and whether there are competitors within traveling distance. The District stated that lacrosse started first as a club sport; and once it had sustained sufficient numbers, it was elevated to a varsity sport. Additionally, the District stated that crew is a club sport during the fall to introduce students to the sport because it is not offered at the middle school level, but is a varsity sport in the spring. The process for adding a sport is the same application process for any club or activity at the School. The District has no current plan of program expansion that is responsive to the developing interests and abilities of the underrepresented sex.

Based on all of the above, OCR concluded that the District does not have a continuing practice for program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex.

*Part Three: Fully and Effectively Accommodating the Interests and Abilities of the Underrepresented Sex*

Under Part Three of the Three-Part test, OCR determines whether a school district is fully and effectively accommodating the interests and abilities of the underrepresented sex. Although disproportionately high athletic participation rates by one sex (as compared to their enrollment

rates) may indicate that a school district is not providing equal athletic opportunities to its students of the other, underrepresented sex, a school district can satisfy Part Three where there is evidence that the imbalance does not reflect discrimination, i.e., where it can be demonstrated that notwithstanding disproportionately low participation rates of the underrepresented sex, the interests and abilities of these students are, in fact, being fully and effectively accommodated.

In making this determination, OCR considers whether there is (1) unmet sufficient interest in a particular sport; (2) unmet sufficient ability to sustain a team in the sport; and (3) a reasonable expectation of competition for the team. If all three conditions are present, OCR will find that a school district has not fully and effectively accommodated the interests and abilities of the underrepresented sex.

OCR evaluates a broad range of indicators in determining whether an institution has unmet interest and ability to support an interscholastic team in a particular sport, including the following five elements: (1) whether an institution uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students; (2) whether a viable team for the underrepresented sex recently was eliminated; (3) multiple indicators of interest; (4) multiple indicators of ability; and (5) frequency of conducting assessments.

An institution may not rely on a survey alone, regardless of response rate, to determine whether it is fully and effectively accommodating the interests and abilities of its underrepresented students. OCR will examine multiple indicators when determining whether there is sufficient ability among interested students of the underrepresented sex to sustain a team, including:

- The athletic experiences and accomplishments – in interscholastic, club or intramural competition – of underrepresented students interested in playing the sport;
- Opinions of coaches, administrators, and athletes at an institution regarding whether interested students have the potential to sustain an interscholastic team;
- If the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an interscholastic team;
- Participation in other sports, interscholastic or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered; and
- Tryouts or other direct observations of participation in the particular sport in which there is interest.

OCR's evaluation of whether an institution assesses interest and ability periodically so as to be able to identify any developing interests and abilities of the underrepresented sex in a timely and responsive manner takes several factors into account, including:

- The degree to which the previous assessment captured the interests and abilities of the institution's students of the underrepresented sex;
- Changes in demographics or student population at the institution (e.g. virtually complete student body turnover every four years); and

- Whether there have been complaints from the underrepresented sex with regard to a lack of athletic opportunities or requests for the addition of new teams.

In interviews with OCR staff, the xxxxxxxxxx stated that the District has not surveyed the interests of students at the School. The District maintained that the District has never denied a request to add a team where there was sufficient interest. As discussed above, during OCR's investigation, the xxxxxxxxxx advised OCR that a group of female students requested the addition of a separate girls' xxxxxx; however, the xxxxxxxxxxxxxxxx stated that the District did not have sufficient numbers to support such a team.

OCR's investigation revealed that during the period of OCR's investigation, volleyball was the only female-specific sport that the District was not currently offering. OCR was able to confirm from web-sites that the following schools located in districts that are within the Cape Atlantic League, against which the District's other sports' teams compete, offered volleyball as a girls' sport during school year 2012-2013: Absegami High School, Buena Regional High School, Cedar Creek High School, Middle Township High School, Oakcrest High School, Our Lady of Mercy Academy, and Pleasantville High School. OCR further determined that based on an informal gym survey conducted during school year 2012-2013, the District began offering co-ed volleyball as a club sport in school year 2013-2014; and, beginning with school year 2015-2016, the District offers girls' volleyball as an interscholastic sport.<sup>5</sup> OCR determined that the only sports not offered by the District but offered by other schools in the Cape Atlantic League are bowling and ice hockey.<sup>6</sup>

Based on the information summarized above, OCR determined the District has not sufficiently surveyed the students to determine whether there is evidence of unmet interest in any particular girls' sport that is not currently being offered; and, has not demonstrated that it has fully and effectively accommodated the interests and abilities of females, the underrepresented sex.

OCR will also assess the following two factors in determining whether the quality of competition provided to male and female athletes equally reflects their abilities:

- i. Whether the competitive schedules for boys' and girls' teams, on a program-wide basis, afford proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities.
- ii. Whether the school district can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by the developing abilities of the athletes of that sex.

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<sup>5</sup> During school year 2013-2014, parents came to a Board of Education meeting verbally requesting the establishment of a girls' volleyball program at the High School, which was thereafter approved for club status for school year 2014-2015 in order to assess interest and sustainably. After one year of club status, the Board approved a Varsity Girls Volleyball team for school year 2015-2016.

<sup>6</sup> The District asserted that it currently offers every competitive sport offered by the Cape Atlantic League and that currently, no schools within the league offer ice hockey or bowling.

The District's teams mainly compete against opponents in the Cape Atlantic League of the NJSIAA. Accordingly, OCR determined that there was no significant disparity regarding the quality of competition provided to male and female athletes.

**Conclusion:**

With respect to Allegation 1, OCR determined that although the District provided equitable quality of competition in the sports it offers, the District did not demonstrate that it provides each sex with equitable athletic opportunities under any part of the Three-Part Test. Therefore, the District failed to establish that it has effectively accommodated the athletic interests and abilities of the underrepresented sex.

On November 20, 2015, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with regard to athletic interests and abilities. OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

**II. Provision Of Equipment And Supplies- 34 C.F.R. § 106.41(c)(2)**

Equipment and supplies include, but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and minor conditioning and weight training equipment. In assessing compliance in this area, OCR considered the quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies.

Head coaches are responsible for ensuring that facilities, equipment and grounds used by their staff are maintained, stored and managed in such a manner as to prolong the life expectancy of those items. The Handbook thereafter sets forth additional responsibilities of the head coach with regard to equipment; including equipment accounting, possession, return and storage, inventorying, and collection. It is also the responsibility of the coach to provide a budget for equipment for the next year at the end-of-season meeting with the xxxxxxxxxxxxxx. OCR determined that the District does not have a specific policy for providing, maintaining or replacing equipment or supplies.

Quality & Amount

The majority of head coaches rated the quality of their equipment and supplies as "excellent" and a few rated the quality as "good." Generally, OCR found the quality and suitability of uniforms and equipment to be comparable for all teams. Uniforms and equipment for both boys' and girls' sports primarily were from Under Armour, as well as New Balance, Russell, Adidas, Duc, Longstreth, Speedo, Badger, and Halloway. OCR determined that equipment and uniforms were available in sufficient quantity for all team members for all sports. Based on the above, OCR determined that there was no disparity regarding the quality and amount of equipment and supplies.

Suitability

Equipment and supplies were in accordance with regulations. Accordingly, OCR determined that there was no disparity regarding the suitability of equipment and supplies.

#### Maintenance & Replacement

None of the coaches identified any problems with equipment replacement. OCR determined that the replacement schedule for game uniforms was every 4 years, with the exception of the following: swimming (suits replaced annually); girls' soccer (game uniforms replaced every 5 years); girls' tennis (team uniforms were 6 years old); and baseball (varsity uniforms were brand new, but junior varsity uniforms were 12 years old and freshman uniforms were 15 years old). OCR determined that these disparities offset. The coaches informed OCR that equipment is generally replaced annually or based on wear and tear; with the exception of items such as jackets, warm ups and travel bags, if provided, which were replaced less frequently. Coaches indicated that all teams launder their own apparel. Based on the above, OCR determined that there was no significant disparity favoring male or female athletes regarding the maintenance and replacement of equipment and supplies.

#### Availability

No coaches reported any equipment storage issues. All indicated that equipment was stored in convenient locations, either near the gym or fields, both in season and off season. OCR determined that there were no issues regarding the availability of equipment and supplies to athletes.

#### **Conclusion:**

OCR found no significant disparity in the quality, amount, suitability, maintenance and replacement, or availability of equipment and supplies provided to boys' and girls' teams. Consequently, OCR determined that there is no significant disparity between boys' and girls' teams with respect to the provision of equipment and supplies. Accordingly, OCR concluded that there was insufficient evidence to substantiate the complainant's allegation that the District failed to provide equal athletic opportunities to students of both sexes with respect to the provision of equipment and supplies during school year 2012-2013.

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

The regulation requires that male and female athletes be provided with an equivalent opportunity to receive coaching benefits and services. In determining whether equal athletic opportunities are available, OCR compared the opportunity to receive coaching, along with the assignment and compensation of coaches for male and female athletes.

OCR examines three factors in determining compliance for the opportunity to receive coaching: (a) relative availability of full-time coaches; (b) relative availability of part-time and assistant coaches; and (c) relative availability of graduate assistants, if any. OCR assesses two factors in

determining compliance for the assignment of coaches: (a) training, experience, and other professional qualifications; and (b) professional standing. OCR assesses seven factors in determining compliance for the compensation of coaches: (a) rate of compensation (per sport, per season); (b) duration of contracts; (c) conditions relating to contract renewal; (d) experience; (e) nature of coaching duties performed; (f) working conditions; and, (g) other terms and conditions of employment.

Availability of Coaches

The District provided one head coach for each varsity and junior varsity (JV) team, except for diving when it became a sport separate from swimming. All teams had at least one assistant coach, except for boys' and girls' xxxxxxxxxx. All head coaches were also xxxxxxxxxxxxxx xxxxxx except for the xxxxxxxxxxxxxx and xxxxxxxxxxxxxxxx.

For school year 2010-2011, the District provided a total of 11 head coaches and 27 assistant coaches for the 455 male athletes, and a total of 10 head coaches and 19.5 assistant coaches for the 359 female athletes. The data the District provided for school year 2010-2011 demonstrated that although there were disparities when comparing same/similar sports, overall there was no disparity between boys' and girls' teams regarding the availability of coaches. Specifically, the boys' and girls' teams each approximately had a 1:12 coach-to-athlete ratio.<sup>7</sup>

For school year 2011-2012, the District provided a total of 11 head coaches and 25 assistant coaches for the 434 male athletes, and a total of 10 head coaches and 20 assistant coaches for the 309 female athletes. The data the District provided for school year 2010-2011 demonstrated that although there were disparities when comparing same/similar sports, overall there was no disparity between boys' and girls' teams regarding the availability of coaches. Specifically, the boys' and girls' teams each approximately had a 1:12 coach-to-athlete ratio.<sup>8</sup>

For school year 2012-2013, the District provided a total of 11 head coaches and 27 assistant coaches for the 419 male athletes, and a total of 10 head coaches and 19.5 assistant coaches for the 317 female athletes. The data the District provided for school year 2012-2013 demonstrated that although there were disparities when comparing same/similar sports, overall there was no disparity between boys' and girls' teams regarding the availability of coaches. Specifically, the boys' and girls' teams each approximately had a 1:11 coach-to-athlete ratio.<sup>9</sup>

OCR investigative experience indicates that the availability of coaches may not be equivalent even when the athlete-to-coach ratios are equivalent. This tends to occur, for example, when most or all of the boys' teams have assistant coaches but few girls' teams have assistant coaches.

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<sup>7</sup> OCR's Investigatory Manual (the Manual) states that coaches of coed and combined teams should be excluded from the analysis. Accordingly, OCR excluded xxxxxxxxxxxxxx and xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx from its analysis below.

<sup>8</sup> The Manual states that coaches of coed and combined teams should be excluded from the analysis. Accordingly, OCR excluded xxxxxxxxxxxxxx and xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx from its analysis below.

<sup>9</sup> The Manual states that coaches of coed and combined teams should be excluded from the analysis. Accordingly, OCR excluded xxxxxxxxxxxxxx and xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx from its analysis below.

Thus, OCR conducts additional analysis by comparing the number of girls' teams that have assistant coaches with the number of boys' teams that have assistant coaches.

OCR's investigation revealed that each of the boys' and the girls' teams had assistant coaches with the exception of the boys' xxxxxxxxxxxx and girls' xxxxxxxxxxxx teams. OCR determined that for same and similar sports, each boys' and girls' team had equal numbers of assistant coaches, with the exception of the xxxxxxxxxxxx teams and the boys' and girls' xxxxxxxx teams. Specifically, OCR determined that the girls' xxxxxxxx team had 1 more assistant coach than the boys' xxxxxxxx team for school years 2010-2011 and 2011-2012; however, for school year 2012-2013, the xxxxxxxx and xxxxxxxx teams had the same number of assistant coaches. OCR further determined that the girls' xxxxxxxx team had .5 more additional assistant coaches than the boys' xxxxxxxxxxxx team for school year 2011-2012; however, for school year 2012-2013, the xxxxxxxx teams had the same number of assistant coaches. Overall, OCR determined that during school year 2012-2013, there was no disparity with regard to the availability of assistant coaches.

Assignment of Coaches

OCR next examined the assignment of coaches to determine whether the District assigned more experienced coaches to one sex or the other, and whether there was a pattern of the District's assigning less qualified coaches to the boys' or girls' program.

During school year 2012-2013, when comparing same/similar sports, there were disparities for both boys' and girls' teams.<sup>10</sup> Specifically, the head coaches for girls' xxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxx had more years of experience than the head coach of the same/similar boys' teams; while the head coaches for boys' xx xxxxxxxx had more experience than the head coach of the same/similar girls' teams. Overall, the boys' head coaching staff had an average of 23 years of experience, and the girls' head coaching staff had an average of 19 years of experience; a difference of 4 years of experience. Comparing only same/similar sports, the boys' head coaching staff had an average of 23 years of experience, and the girls' head coaching staff had an average of 20 years of experience; a difference of 3 years of experience. Accordingly, OCR determined that there was a disparity favoring boys' teams with regard to the experience of head coaches.

The District provided information regarding the experience of assistant coaches for each sport except xxxxxxxxxxxxxxxxxxxxxxxxxxxx.<sup>11</sup> Based on the data available, OCR determined that assistant coaches of boys' teams had on average 14.5 years of coaching their respective sport in the District, while assistant coaches of girls' teams had on average 8 years of experience.<sup>12</sup> Comparing only same/similar sports, the boys' assistant coaching staff had an average of 13.6 years of experience, and the girls' assistant coaching staff had an average of 9.8 years of experience; a difference of 3.8 years of experience. Accordingly, OCR determined that there was a disparity favoring boys' teams regarding experience of assistant coaches.

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<sup>10</sup> OCR excluded xxxxxxxxxxxxxxxxxxxx and xxxxxxxxxxxxxxxxxxxx from its analysis.

<sup>11</sup> Because teams had varying numbers of assistant coaches, OCR used the average number of years' experience for all assistant coaches for the team as provided to OCR.

<sup>12</sup> OCR notes that even within sports, the years of experience varied greatly. For example, xxxxxxxxxxxxxxxxxxxx xxxxxxxx had 20 years of experience, but another had only 2 years' experience.

Based on all of the above, OCR determined that there was a disparity favoring boys' teams regarding the assignment of coaches.

### **3. Compensation**

OCR compared the salaries of head coaches in the boys' program to the salaries of head coaches in the girls' program; and the salaries of assistant coaches in the boys' program to the salaries of assistant coaches in the girls' program.<sup>13</sup> OCR's investigation revealed that for school year 2012-2013 the boys' program had a total of 11 head coaches, and 27 assistant coaches; and the girls' program had a total of 10 head coaches and 19.5 assistant coaches.

Head and assistant coaches each received a salary/stipend to perform their coaching responsibilities. The majority of the coaches were full-time District employees (teachers and/or administrators) who performed their coaching responsibilities for an additional stipend. Salaries/stipends for head coaches and assistant coaches were determined by the collective bargaining agreement (CBA) between the teachers and the District, and contractual salary amounts per sport were dependent upon the length of the season and the amount of time required (e.g., the number of events) per sport. All JV and Freshman teams were coached by assistant coaches. Assistant coaches received the same stipend, regardless of whether they coached a JV or Freshman team. Applicants applied for the specific coaching position in which they were interested.

OCR determined that during school year 2012-2013, when comparing same/similar sports, head coaches and assistant coaches for the boys' and girls' teams received the same stipend.<sup>14</sup> OCR determined that the head and assistant coaches of the boys' program received a total of \$253,190 or 57% of the total salaries (\$444,081) while representing 57% of the athletes; and the coaches for the girls' program received \$190,828 or 43% of the total salaries (\$444,081) while representing 43% of the athletes. Accordingly, OCR did not find a disparity favoring either sex with regard to the total coaching funds.

Based on the above information, OCR determined that compensation is provided at the same rate for comparable sports depending on whether the coach is a head coach or an assistant coach.

#### **Conclusion:**

Based on all of the above, OCR determined that there was no disparity with regard to the availability of coaches. OCR determined that there was a disparity favoring boys' teams regarding the assignment of coaches; specifically, coaches of boys' teams had more experience on average than coaches of girls' teams. OCR's primary focus in this component is on the availability of coaches. Following that, the qualifications of coaches will need to show a pattern of less qualified coaches being assigned to students of one sex before a lack of equivalence can

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<sup>13</sup> OCR excluded xxxxxxxx and xxxxxxxxxxxxxxxxxxxx from its analysis with regard to compensation.

<sup>14</sup> OCR excluded from the total compensation the salaries for the coaching staff of the xxxxxx, which is xxxxxx, and xxxxxxxxxxx, which is xxxxxxxx team.



If you have any questions regarding OCR's determination, please contact Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3914 or [jane.momo@ed.gov](mailto:jane.momo@ed.gov); Jocelyn M. Panicali, Senior Compliance Team Attorney at (646) 428-3796 or [jocelyn.panicali@ed.gov](mailto:jocelyn.panicali@ed.gov); or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or [nadja.r.allen.gill@ed.gov](mailto:nadja.r.allen.gill@ed.gov).

Sincerely,

/s/  
Timothy C.J. Blanchard

cc: xxxxxxxxxxxxxxxxxxxx