



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 30, 2022

Sent via email only to: franchinij@apcsd.org

Dr. James Franchini
Superintendent
Averill Park Central School District
146 Gettle Road
Averill Park, New York 12018

Re: Case No. 02-14-1048
Averill Park Central School District

Dear Dr. Franchini:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the complaint filed against the Averill Park Central School District. The Complainant alleged that the District discriminated against female students on the basis of sex by not effectively accommodating the interests and abilities of female students in its athletics program (Allegation 1); and by failing to provide equal athletic opportunities to female students at Averill Park High School (the School) with respect to the opportunity to receive coaching, and the assignment and compensation of coaches (Allegation 2).

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX.

In its investigation, OCR collected and analyzed data and other documentation the District submitted for school years 2013-2014, 2014-2015 and 2015-2016 with respect to the accommodation of student interests and abilities; and the opportunity to receive coaching and the assignment and compensation of coaches. OCR also surveyed School coaches and reviewed documentation that the Complainant submitted. As discussed below, OCR determined there was insufficient evidence to substantiate Allegation 2. Before OCR completed its investigation of Allegation 1, the District offered to resolve the allegation by taking the steps in the enclosed Resolution Agreement (Agreement) and OCR determined that a voluntary resolution is appropriate to resolve Allegation 1 pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.¹

¹ See *CPM* (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

I. Applicable Legal Standards

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 provided male and female students equal opportunities to participate in its interscholastic 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, at 34 C.F.R. § 106.41(c)(5) & (6), also requires a recipient to provide equal athletic opportunities for members of both sexes with regard to the opportunity to receive coaching and assignment and compensation of coaches.²

II. Investigative Findings, Legal Analysis, and Conclusions

A. Background

The District is located in Averill Park, New York and has three elementary schools serving grades Kindergarten through 5; one middle school serving grades 6 through 8; and one high school serving grades 9 through 12. In school year 2013-2014, the District enrolled over 2,700 students in grades K through 12. The District is a member of the New York State Public High School Athletic Association (NYSPHSAA),³ Section 2,⁴ and within Section 2, the Suburban Council league.⁵

² In addition to the regulation implementing Title IX, the following clarifying OCR policy and guidance documents are also applicable: the OCR Intercollegiate Athletics Policy Interpretation, issued December 11, 1979; 44 Fed. Reg. 71413 (1979); a letter from OCR, dated January 16, 1996, entitled “Clarification of Intercollegiate Athletic Policy Guidance: the Three-Part Test” (1996 Clarification); a letter from OCR to the General Counsel of Bowling Green State College, dated July 23, 1998; a letter from OCR, dated July 11, 2003, entitled “Further Clarification of Intercollegiate Athletics Policy” (2003 Clarification); and a Dear Colleague Letter, issued by OCR on April 20, 2010, regarding the Three-Part Test.

³ The NYSPHSAA is the governing body of interscholastic sports for many school districts in New York State. Membership is open to public, parochial, and private secondary schools offering interscholastic athletic activities for students in grades 7-12. NYSPHSAA is geographically divided in 11 “Sections” to administer athletic programs for member schools.

⁴ Section 2 has 94 member high school/districts, with yearly student-athlete participation of around 56,000 students competing in 30 different sports.

See <https://section2athletics.org/sports/2020/6/2/About%20Section%20%20Athletics.aspx> (last visited November 30, 2022).

⁵ Section 2 has eight leagues.

See By-Law #2, Section 2 Constitution. See <https://section2athletics.org/sports/2020/2/10/constitution-committee-info.aspx> (last visited November 30, 2022). The District is one of 15 members of the Suburban Council. See <https://averillpark.k12.ny.us/suburban-council-schools> (last visited November 30, 2022).

B. Effective Accommodation of Athletic Interests and Abilities

OCR examined whether the District provided male and female students an equal opportunity to participate in its 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. Part One: Whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; *or*
2. Part Two: 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. Part Three: 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.

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 meets any part of the Three-Part Test, OCR will determine that the institution is meeting this requirement. If an institution’s athletics program also equitably provides each sex with the level of competition reflective of their respective abilities,⁶ OCR will determine that the institution is effectively accommodating athletic interests and abilities.

Allegation 1

The Complainant alleged that although the District offered fewer sports for girls than boys (nine sports for girls and ten sports for boys) at the School in school year 2013-2014, the District was considering adding a boys’ lacrosse team in spring 2014. The Complainant also stated that boys outnumbered girls in the athletics program at the School.

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

⁶ 1996 Clarification; 2003 Clarification.

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 are enough 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 School's athletic program for school years 2013-2014, 2014-2015 and 2015-2016.

In determining participation opportunities, OCR counted the number of athletes participating in each competitive sport⁷ by examining the rosters for all sports offered at the School and compared the student enrollment in the School to the number of athletic opportunities available to students, by sex. OCR's analysis included junior varsity (JV) and varsity teams but did not include modified sports⁸ or varsity and JV winter cheerleading. Although the District included varsity and JV winter cheerleading in its list of sports offerings and asserted that these teams should be regarded as athletic teams and included as participation opportunities for girls for school years 2014-2015 and 2015-2016, OCR determined that the District did not provide sufficient information regarding its varsity cheerleading program for OCR to determine that it is an interscholastic sport for the purpose of Title IX.

While the information provided indicated that the varsity cheerleading team is structured and administered in a manner consistent with established varsity sports within the District's athletics program, in that it has a coach, tryouts, an operating budget and access to support services, the District did not provide sufficient detail regarding the varsity cheerleading team's operating budget, tryouts, and what support services were actually provided to the varsity team. Information the District provided also indicated that the varsity cheerleading team engaged in competition during a specified season and within an athletic conference in a manner consistent with established varsity sports in the District's athletics program; and the varsity cheerleading team did not promote or support other teams. However, the varsity cheerleading team participated in fewer than the number of competitive opportunities the NYSPHSAA permitted; the number of competitive opportunities was limited in relation to the competitive events afforded other varsity teams, and OCR had no information regarding the varsity cheerleading team's practice opportunities. Therefore, OCR would require additional information regarding the varsity cheerleading team to determine whether it is an interscholastic sport for the purpose of Title IX.

⁷ For purposes of determining the number of athletic opportunities, OCR counts all participants who are receiving institutionally sponsored support normally provided to athletes, are participating in organized practice sessions and team meetings and activities on a regular basis, and are 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. To determine accurate participation numbers for male and female athletes, OCR scrutinizes the squad lists and other information a recipient provides and reviews the information with coaches from the various teams.

⁸ Modified sports refer to interscholastic competition in sports for students below the 10th grade level that have been modified by the NYSPHSAA and adapted to students in those grades. See NYSPHSAA Handbook available at: https://nysphsaa.org/documents/2022/2/15/NYSPHSAA_Handbook_002.pdf (last visited November 30, 2022).

With regard to the JV cheerleading team, OCR determined that the information the District provided is similarly insufficient for OCR to determine that the JV cheerleading team is an interscholastic sport for the purpose of Title IX, and also noted that part of the JV cheerleading team's purpose is to support and promote other teams during its winter season. Therefore, OCR cannot conclude that the JV cheerleading team is an interscholastic sport for the purpose of Title IX compliance. Accordingly, OCR has not included either team in its analysis of athletic participation opportunities for female students at the School for the years in question. The District may provide additional and updated information during the monitoring of this case for OCR's consideration.

OCR determined that the athletic participation opportunities the District offered to girls and boys were disproportionate to their respective enrollments in school years 2013-2014, 2014-2015, and 2015-2016. OCR's analysis indicated that during all three years under review, girls had fewer opportunities to participate than did boys, relative to their respective proportion of the School population.

During school year 2013-2014, girls had 277 (44.75%) of the athletic opportunities and represented 573 (49.44%) of the overall enrollment. The difference between enrollment and opportunities was a difference of 4.69% in favor of boys. To achieve exact proportionality, the District would need to increase girls' athletic opportunities by 57.41, which is greater than the average girls' team size of 18.27 athletes for that year.

During school year 2014-2015, girls had 278 (43.10%) of the athletic opportunities and represented 542 (49.95%) of the overall enrollment. The difference between enrollment and opportunities was a difference of 6.85% in favor of boys. To achieve exact proportionality, the District would need to increase girls' athletic opportunities by 88.32, which is greater than the average girls' team size of 16.18 athletes for that year.

During school year 2015-2016, girls had 300 (44.38%) of the athletic opportunities and represented 527 (50.38%) of the overall enrollment. The difference between enrollment and opportunities was a difference of 6% in favor of boys. To achieve exact proportionality, the District would need to increase girls' athletic opportunities by 81.80, which is greater than the average girls' team size of 18.75 athletes for that year.⁹

Because OCR concluded that participation opportunities for girls at the School in all three years under review were not substantially proportionate, OCR analyzed whether the District could establish compliance under Part Two of the test.

⁹ As stated above, OCR's analysis did not include participants on the varsity and JV cheerleading teams, as OCR could not determine that they met the definition of a "sport" for Title IX purposes. However, even if OCR included the teams in its analysis, the District would not have satisfied Part One for school year 2015-2016. If OCR included varsity and JV cheerleading, girls had 336 (47.20%) of the athletic opportunities and represented 527 (50.38%) of the overall enrollment, a difference of 3.19% in favor of boys. To achieve exact proportionality, the District would need to increase girls' athletic opportunities by 45.80, which is greater than the average girls' team size of 18.67 athletes. The results were similar for school years 2013-2014 and 2014-2015.

Part Two: History and Continuing Practice of Program Expansion

Under Part Two of the Three-Part Test, an institution may demonstrate compliance by showing 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. Part Two examines an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

OCR considers the following factors, among others, as evidence that an institution's history of program expansion 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 School offered the following seven boys' sports prior to 1972: Football, Golf, Wrestling, Tennis, Indoor Track and Field, Baseball and Basketball. The District was unable to provide to OCR the dates these sports began. In 1972, the School began offering a girls' interscholastic athletics program and added three sports/five teams: field hockey, volleyball (JV and varsity) and basketball (JV and varsity). Since 1972, the District has expanded its sports offerings for both boys and girls. For boys, the District has added five teams: freshman baseball and basketball in 1999; JV and varsity lacrosse in 2014 and 2016, respectively; and varsity ice hockey in 2019. For girls, the District has added girls' softball, track and field, and soccer in 1974; lacrosse in or around 1989; and freshman soccer, basketball, and softball in 1999; and a varsity swim team in school year 2018-2019.¹⁰

The District did not provide to OCR a complete list of sports and/or teams it added or eliminated over the course of its athletic program. However, the information the District provided indicated that in 1975, the District eliminated the girls' field hockey team, purportedly due to a lack of interest. Additionally, in 2012, the District eliminated all freshmen sports, which included the girls' soccer, basketball and softball teams, and the indoor track teams. The District stated that it eliminated the teams due to budgetary cuts.

Except as described above, the District did not provide any specific information regarding increasing the numbers of participants who are members of the underrepresented sex throughout the years of the athletics program. OCR determined that during school years 2013-2014 through 2015-2016, there was an overall increase of 23 participation opportunities for girls, the underrepresented sex. During the same period, there was an increase of 34 participation opportunities for boys, the overrepresented sex. Since school year 2015-2016, the District has

¹⁰As stated above, after the NYSPHSAA recommended to the NYSED that competitive cheer be recognized as a sport beginning with the winter 2014-2015 season, the District elevated cheerleading to a competitive sport and included both JV and varsity cheerleading teams in its athletics program. However, as analyzed above, OCR did not have sufficient information to determine that competitive cheer should be considered a sport for Title IX purposes.

added more participation opportunities for boys by adding two lacrosse teams and an ice hockey team. During the same period, the District added a girls' swim team with only one female participant. OCR cannot find that this constitutes a record of increasing the number of participation opportunities for girls. Moreover, as stated above, the District eliminated freshmen girls' soccer, basketball and softball, and the indoor track team over the years of the program, making it difficult to demonstrate a record of increasing the numbers of participants who are members of the underrepresented sex. Based on the above, OCR cannot conclude that the District has a record of increasing the numbers of participants in interscholastic athletics who are members of the underrepresented sex.

The Complainant asserted to OCR that she had requested that the District re-start a girls' field hockey team, but the District denied the requests. She also asserted that a student at the School told her that she requested that the District re-start a field hockey team, but the athletic director at the time "dismissed her." The Complainant did not provide the dates of these alleged requests or any other details to OCR.

The Athletic Director stated that he was not aware of any requests for the addition of sports or unmet interest and asserted that no middle school or School student had approached him to express interest in adding a sport that was not already offered. The Athletic Director stated that a parent called him in school year 2015-2016 to inquire about the process for adding a boys' ice hockey team, the cost of such a team, and where the team could play, but did not pursue the matter further.

The District informed OCR that in October 2013, members of the Youth Lacrosse Program presented to the District's Board of Education the idea of adding a boys' lacrosse program. In November 2013, District staff communicated with various stakeholders, including community members and the Suburban Council, regarding the proposal to add boys' lacrosse. The District asserted that parents also supported the addition of lacrosse. OCR determined that the District added boys' JV lacrosse to its interscholastic athletics program in or around spring 2014 and added a boys' varsity lacrosse team in 2016. The District stated that the lacrosse program is "fully funded by U.S. Lacrosse's 'First Stick' grant program and the Youth Lacrosse Program."

Although the District provided anecdotal information regarding oral requests for the addition of teams, it did not provide any documentation to demonstrate that it responded to requests for new teams and did not maintain records of any requests for the addition of teams. Based on the above, OCR cannot determine that the information the District provided has established a pattern of affirmative responses to requests by students or others for the addition of sports and/or teams.

OCR also will consider the following factors, among others, as evidence that may indicate a continuing practice of 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.

OCR determined that for the school years under review, there was no District- or School-level formal procedure for students, coaches, parents, or others to request additional sports. The District stated that students, parents, and coaches may make requests to the Athletic Director, but the District did not publicize or otherwise share that informal process with students, parents, and others. OCR determined that this informal and unpublished process was insufficient to demonstrate that the District had a nondiscriminatory policy or procedure for students or parents to request the addition of a sport, or that the District effectively communicated any such policy or procedure to students or parents. The District has no District- or School-wide plan of program expansion that is responsive to the developing interests and abilities of the underrepresented sex.

Based on the above, OCR determined that the District had not, on the District or School level, established a history and continuing practice of athletic program expansion responsive to the interests of female students, and thus did not comply with Part Two.

Part Three: Effective Accommodating of Interests and Abilities

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.

In its evaluation of whether an institution assesses interest and ability periodically to enable it to identify any developing interests and abilities of the underrepresented sex in a timely and responsive manner, OCR 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 at a typical high school); and
- Whether there have been complaints from the underrepresented sex about a lack of athletic opportunities or requests for the addition of new teams.

The District stated that prior to and during the years under review, it had not conducted any surveys or other District- or School-wide assessments of interest and abilities of students.

Based on the 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.

Equivalent Levels of Competition

OCR also will 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.

The District's teams mainly competed against opponents in the Suburban Council. OCR's investigation did not reveal, and coaches did not have concerns, that the District was not providing genuine athletic participation opportunities to athletes or that the opportunities provided were not equivalent based on sex. Accordingly, OCR determined that the District provided equitable levels of competition to male and female athletes.

Conclusion

OCR determined that although the District provided equitable quality of competition in the sports it offered, the District could not demonstrate that it provided each sex with equitable athletic opportunities under any part of the Three-Part Test for school years 2013-2014, 2014-2015, and 2015-2016.

Prior to the completion of OCR's investigation of Allegation 1, on July 12, 2022, the District signed the attached Agreement to voluntarily resolve Allegation 1 that the District discriminated against female students on the basis of sex by not effectively accommodating the interests and abilities of female students in its athletics program.

Obligations Under the Agreement

Pursuant to the Agreement, the District will provide participation opportunities for female and male students that effectively accommodate the athletic interest and abilities of members of both sexes, consistent with the requirements of the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1). The District will provide athletic participation opportunities that are either substantially proportionate to each sex's enrollment at the School, or demonstrate that the School's current athletics program is fully and effectively accommodating the interests and abilities of female students at the School. The District will also develop, adopt, and publish a process and written procedure for students or other interested parties, such as coaches or parents/guardians, to use in requesting that the District add new sports or levels of sports at the School. The District will retain all requests for new sports or levels of sports for a minimum of 10 years.

OCR will monitor the District's implementation of the Agreement. Upon the District's compliance with the terms of the Agreement, Title IX and its implementing regulations at 34 C.F.R. Part 106, which were at issue in this case, OCR will close the case.

C. Opportunity to Receive Coaching & Assignment and Compensation of Coaches

The regulation implementing Title IX, at 34 C.F.R. § 106.41 (c)(5) & (6), requires that male and female athletes be provided with an equivalent opportunity to receive coaching benefits and services. In determining whether equal athletic opportunities to receive coaching benefits and services are available, OCR compared the opportunity to receive coaching, and 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. 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.

Allegation 2

The Complainant alleged that the District discriminated on the basis of sex in its athletics program by failing to provide equal athletic opportunities to female students at the School with respect to the opportunity to receive coaching, and the assignment and compensation of coaches. Specifically, the Complainant alleged that the boys' program had eight more coaching positions than the girls' program.

Availability of Coaches

The District provided one head coach for each boys and girls varsity and JV team, except for JV and varsity cross country and bowling, which had only 0.5 coaches assigned during school year 2015-2016. OCR also determined that six boys' teams (JV/varsity football, varsity basketball, varsity wrestling, varsity baseball, varsity lacrosse and outdoor track) and four girls' teams (varsity basketball, varsity softball, varsity lacrosse, and varsity outdoor track) had at least one assistant coach. Three boys' teams had two assistant coaches each.

OCR determined that overall, there was no disparity favoring either program with respect to the availability of coaches in school years 2013-2014 and 2014-2015. Specifically, OCR determined that in school year 2013-2014, both boys' and girls' teams averaged a coach-to-athlete ratio of 1:12; and in school year 2014-2015, both boys' teams and girls' teams averaged a coach-to-athlete ratio of 1:11. OCR determined that in school year 2015-2016, there was, overall, a slight disparity favoring boys' teams regarding the availability of coaches. Specifically, the boys' teams had a 1:13 coach-to-athlete ratio and girls' teams had a 1:14 coach-to-athlete ratio.

Assignment of Coaches

OCR examined the assignment of coaches to determine whether the District assigned more experienced coaches to one sex as compared to the other, and whether there was a pattern of the District's assigning less qualified coaches to the boys' or girls' program. OCR reviewed the average experience of coaches the District employed.¹¹

During school year 2013-2014, head coaches in the boys' program had an average of 11.35 years of coaching experience at the School, whereas head coaches in the girls' program had an average of 14.36 years of coaching experience at the School, a difference of 3.01 years in favor of girls. Assistant coaches in the boys' program had an average of 10.50 years of coaching experience at the School, whereas assistant coaches in the girls' program had an average of 18.00 years of coaching experience at the School, a difference of 7.50 years in favor of girls. On average, the

¹¹ The years of experience represent experience coaching the listed sport at the School.

coaching staff of the boys' teams had 11.08 years of experience, whereas the coaching staff of the girls' teams had 15.09 years of experience, a difference of 4.01 years in favor of girls.¹²

During school year 2014-2015, head coaches in the boys' program had an average of 11.70 years of coaching experience at the School, whereas head coaches in the girls' program had an average of 14.24 years of coaching experience at the School, a difference of 2.54 years in favor of girls. Assistant coaches in the boys' program had an average of 9.9 years of coaching experience at the School, whereas assistant coaches in the girls' program had an average of 22.50 years of coaching experience at the School, a difference of 8.36 years in favor of girls. On average, the coaching staff of the boys' teams had 16.65 years of experience, whereas the coaching staff of the girls' teams had 19.53 years of experience, a difference of 2.88 years in favor of girls.

During school year 2015-2016, head coaches in the boys' program had an average of 10.25 years of coaching experience at the School, whereas head coaches in the girls' program had an average of 13.24 years of coaching experience at the School, a difference of 2.99 years in favor of girls. The District did not provide information to OCR regarding the experience of assistant coaches for school year 2015-2016. However, it asserted that the information regarding the assistant coaches was generally the same as provided for the previous year.

Based on the above, OCR determined that there was a disparity favoring girls with respect to the assignment of coaches.

Compensation of Coaches

In assessing compensation of coaches, OCR considered the allocation of coaching funds to the girls' and boys' programs, including 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.

The District informed OCR that all coaches also were full-time teachers employed by the District and were not relieved of their teaching responsibilities in order to coach. OCR determined that coaching stipends were established by a salary schedule set forth in the District's Collective Bargaining Agreement between the District and the District Teachers' Association that was based upon the number of years the coach had been coaching the sport. OCR's investigation did not find that the District treated coaches differently with respect to duration of contracts, conditions relating to contract renewal, experience, nature of duties, working conditions, and other terms and conditions of employment.

During school year 2013-2014, the District paid a total of \$247,056.05 in coaching stipends, \$135,693.50 for boys' sports and \$111,362.55 for girls' sports. OCR determined that coaches of boys' teams received 54.92% of the total stipends paid to coaches during school year 2013-2014, while boys represented 55.25% of the School's athletic participation opportunities. Coaches of girls' teams received 45.08% of the total stipends paid to coaches during school year 2013-2014, while girls represented 44.75% of the School's athletic participation opportunities. Accordingly,

¹² OCR determined that one of the coaches of several of the girls' teams has 45 years of experience, significantly more than any other coach.

OCR determined that there was a slight disparity of 0.33% favoring girls with respect to the proportion of coaching funds provided.

During school year 2014-2015, the District paid a total of \$235,573.17 in coaching stipends, \$135,719.75 for boys' sports and \$99,853.42 for girls' sports. OCR determined that coaches of boys' teams received 57.61% of the total stipends paid to coaches during school year 2014-2015, while boys represented 56.90% of the School's athletic participation opportunities. Coaches of girls' teams received 42.39% of the total stipends paid to coaches during school year 2014-2015, while girls represented 43.10% of the School's athletic participation opportunities. Accordingly, OCR determined that there was a slight disparity of 0.71% favoring boys with respect to the proportion of coaching funds provided.

The District reported that for school year 2015-2016, salary information had not changed from the prior year. In school year 2015-2016, boys represented 55.62% of the School's athletic participation opportunities, while girls represented 44.38% of the School's athletic participation opportunities. Assuming no changes to salary information from school year 2014-2015, coaches of boys' teams received 57.61% of the total funds paid to coaches, while coaches of girls' teams received 42.39% of the total. Accordingly, OCR determined that there was a slight disparity of 1.99% favoring boys with respect to the proportion of coaching funds provided for school year 2015-2016.

Based on the above, OCR determined that there was a slight disparity favoring boys in two of the three years examined, and a slight disparity favoring girls in one of the years examined.

Conclusion

Based on the above, OCR determined that there was no disparity or a slight disparity favoring boys with respect to the availability of coaches in the years under review. OCR also determined that there is a disparity favoring girls with respect to the assignment of coaches; specifically, coaches of girls' teams had more experience. With respect to the compensation of coaches, OCR determined that there was a slight disparity favoring girls in one year and a slight disparity favoring boys in the other two years. OCR determined that overall, the disparities found were not significant and that the differences in favor of each sex offset each other. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainant's allegation that the District discriminated on the basis of sex by failing to provide equal athletic opportunities to female students at the School with respect to the opportunity to receive coaching, and the assignment and compensation of coaches. Accordingly, OCR is closing Allegation 2.

As stated above, on July 12, 2022, the District signed the Agreement to resolve Allegation 1, pursuant to Section 302 of OCR's *CPM*. OCR will monitor the District's implementation of the Agreement. Upon the District's compliance with the terms of the Agreement and with Title IX and its implementing regulations at 34 C.F.R. Part 106, which were at issue in this case, OCR will close the case.

This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth

OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the District with OCR.

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

The Complainant has a right to appeal OCR's determination regarding Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information in this letter was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have questions, please contact Charles Skriner, Compliance Team Attorney, at (646) 428-3890 or charles.skriner@ed.gov; or Jocelyn Panicali, Compliance Team Leader, at (646) 428-3796 or jocelyn.panicali@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

cc: XXX, Esq.