

VOLUNTARY RESOLUTION AGREEMENT

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

In order to resolve Case No. 02-14-1048, the Averill Park Central School District assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the following actions pursuant to the requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106.

By entering into this resolution agreement, the District does not admit nor should it be deemed to have admitted to any violation of Title IX or any other law.

Effective Accommodation of Interest and Abilities

The District agrees to provide participation opportunities for female and male students that effectively accommodate the athletics 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 Averill Park High School (the School), or demonstrate that the interests and abilities of female students at the School are fully and effectively accommodated by the School's current athletics program.

OCR has made clear to the District that OCR does not require or encourage the elimination of any District interscholastic athletic teams and that it seeks action from the District that does not involve the elimination of athletic opportunities, because nothing in Title IX requires a recipient to cut teams or reduce opportunities for students who are participating in interscholastic athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students.

Action Item 1: Actions to Increase Athletic Opportunities

By September 30, 2022, the District will submit to OCR for review and approval its detailed plan with timeframes to effectively accommodate the interests and abilities of female students to the extent necessary to provide equal opportunity in its interscholastic athletics program by no later than school year 2023-2024, including the steps noted below. In addition, the plan will include a description of interim steps that will be taken by the District during school year 2022-2023 to work toward effectively accommodating the interests and abilities of female students at the School. The District also agrees to conduct periodic assessments of the athletic interests and abilities of its students in subsequent years to ensure that it is effectively accommodating the athletic interests and abilities of its female students at the School consistent with Title IX and its implementing regulation. The District will begin implementation of the plan approved by OCR within 30 days of OCR's approval.

For purposes of this provision, “sufficient interest” is defined as the minimum number of athletes needed to support a team. For “sufficient ability,” it is sufficient that interested students have the potential to sustain an interscholastic team, and students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through try-outs or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, modified level etc.) in which they have expressed interest.

1. Sports currently offered

- a. The District will determine, for sports that are currently offered as interscholastic sports at the School, whether there is a sufficient number of female students with the interest and, if applicable, ability to support the creation of additional levels of competition (junior varsity, modified level, etc.) or multiple squads at the same level of competition, and sufficient competition within the School’s normal competitive region, to support additional levels of competition or multiple squads at the same level of competition in those sports. If so, the District will add additional levels of competition or squads at the same or a lower level of competition at the School in those sports by the next competitive season consistent with the above determination.
- b. In order to increase the competitive participation opportunities for students who are members of the underrepresented sex, the District will consider expanding the squad sizes for interscholastic sports currently offered at the School, consistent with the nature of each sport and the level of interest in each sport. The District will increase the size of each squad where determined to be appropriate. If necessary, the District will provide sufficient coaching staff to support the addition of new athletes to any given squad and take any other steps necessary to ensure that the new athletes on each expanded squad are provided meaningful opportunities to participate in interscholastic athletics.

2. Sports not currently offered

The District will determine whether there is a sufficient number of current School female students with the interest and ability to support the addition of a team or multiple teams (varsity, junior varsity, modified, etc.), in sports not currently offered by the District as interscholastic sports and sufficient competition in those sports within the District’s normal competitive regions. If so, the District will add a team in those sports and will hire coaching staff, recruit student athletes, and provide sufficient resources to the coaching staff no later than school year 2022-2023 to ensure that each team begins competition no later than school year 2023-2024, consistent with the above determination.

3. Response to developing interests and abilities

For any sport that is not currently offered by the School in which there is a sufficient number of female students who have the interest and ability to support a team in that sport, but where the District determines that there is not sufficient competition in that sport within the District’s

normal competitive regions, the District will take ongoing steps to develop the students' interest and ability. Steps may include establishment of intramural or club sports, exploring the establishment of competition in the District's normal competitive regions, and elevating such sports to interscholastic status when competition becomes available.

4. Additional interscholastic opportunities

To the extent that the District adds any sports or additional levels of teams at the School, the District will provide to those team(s), in a manner comparable to other interscholastic teams, sufficient funds in its budget to cover expenses, including but not limited to: coaches, equipment and supplies, travel, publicity and support services. The District will also publicize any new sports or additional levels of teams through written notices, oral announcements and postings on the District's website.

Reporting Requirements:

- a) By September 30, 2022, the District will provide to OCR a report that includes information and supporting documentation demonstrating that its plan will effectively accommodate the interests and abilities of female students by school year 2023-2024. The plan will include a description of interim steps that the District will take during school year 2022-2023 to increase interscholastic athletic participation opportunities for female students at the School.
- b) By June 30, 2023, the District will provide to OCR status reports regarding its implementation of its plan to effectively accommodate the interests and abilities of members of both sexes including as applicable, information demonstrating that coaching staff have been hired for any new teams being added by the District, an update on the District's progress in recruiting student athletes for the added teams, and a copy of the detailed budget provided to the teams to ensure that they are able to begin competition by school year 2023-2024. The status reports will also include documentation regarding the interim steps the District has taken to increase interscholastic athletic participation opportunities for female students during school year 2022-2023.
- c) By June 30, 2024, the District will provide to OCR athletic participation data and School enrollment data demonstrating that it has fully and effectively accommodated the interests and abilities of female students during school year 2023-2024.

Action Item II: Effectively Accommodating Interests and Abilities

Action Item II of this Agreement will apply if the District determines that it will be unable to demonstrate compliance pursuant to Action Item I of this Agreement.

By October 31, 2022, the District will conduct an objective assessment to determine the athletic interests and abilities of female students at the School, and whether the District is fully and effectively accommodating their athletic interests and abilities. The assessment will be based on multiple indicators of interest and of ability, including:

1. Surveys of students at the School and eighth grade students at the District's middle school, using a method that is designed to fully and accurately assess unmet athletic interests and abilities in interscholastic sports among female students. The survey shall seek information on female students' interest, and if applicable, ability to participate in sports not currently offered by the District, but that are offered by other schools that compete within the School's normal competitive region. The surveys should include students' current and future interest in athletics, plus an open-ended inquiry where students will be able to submit comments or requests for additional athletic opportunities at the School. Any survey used by the District to assess interscholastic athletic interests and abilities will be pre-approved as to content and methodology by OCR; and, the methodology, implementation and response rates of each survey will maximize the possibility of obtaining accurate information and facilitating responses.
2. Identification of sports, squads, and levels of sports for female students that are not currently offered by the School, but that are offered by schools that compete within the athletic league(s) in which the School competes and by schools that are within the District's normal competitive regions.
3. Review of any requests (whether oral or written, formal or informal) made to District administrators, Board members, coaches, or staff by or on behalf of current female students to add a particular sport, squad, or level of sport, or to elevate an existing club or intramural sport to interscholastic sport status.
4. Assessments made by District coaches or staff during tryouts, or observations of students participating in club or intramural competition, and other information reflecting the ability of current female students to compete in a particular sport, general athletic ability, participation in other District interscholastic sports, the nature of the particular sport, and other relevant factors. (Neither a poor competitive record, nor the inability of interested students or admitted students to play at the same level of competition engaged in by the District's other athletes is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that current students have the potential to sustain an interscholastic team.)
5. Participation in interscholastic sports at the District's middle school and, where available, participation rates in sports in amateur athletic associations, and community sports leagues that operate in areas from which the District draws its students.
6. Reviewing whether any viable girls' team has been suspended or eliminated in the past ten years and the reason for such decision.
7. Any other information that demonstrates the athletic interests and abilities of the School's female students.
8. Where interest and ability in an interscholastic sport not currently offered by the District is identified, the assessment will also consider whether there is a reasonable expectation of interscholastic competition in the District's normal competitive regions in that sport.

Reporting Requirements:

- a) By August 31, 2022, the District will provide to OCR a copy of the draft survey referenced in Action Item II above, for OCR’s review and approval.
- b) By August 31, 2022, the District will provide to OCR a complete description of the planned methodology for conducting the survey, including how the survey will be distributed, the number of surveys to be distributed, any planned follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who will evaluate the responses to the surveys, and the protocol for retaining a copy of any notes or other documents compiled during the review of the surveys.
- c) Within 30 days of OCR’s approval of the survey and plan for administering the survey, the District will administer the approved survey to female and male students at the School and eighth grade female and male students at the middle school according to the plan approved by OCR.
- d) By November 15, 2022, the District will provide to OCR a detailed report about the assessment conducted pursuant to Action Item II of this Agreement. The report will include, at a minimum, the following information:
 - i. Copies of any surveys administered under this section and the results of those surveys, including but not limited to a complete description of how the surveys were distributed, the number of surveys distributed and the number of responses; any follow-up to the initial distribution of the surveys; the names and contact information for the individual(s) who evaluated the responses to the surveys and a copy of any notes or other documents compiled during the review of the surveys;
 - ii. A summary of sports and squads for members of female students that are not currently offered by the District, but that are offered by schools that compete within the athletic league(s) in which the District competes and by schools that are within the District’s normal competitive region;
 - iii. Rates of participation by female students at the School and at the middle school in club sports; intramural sports; interscholastic sports; physical education courses; and amateur athletic associations, and community and youth sports leagues or clubs in the local area;
 - iv. Copies of any written requests and summaries of any non-written requests made by or on behalf of students who are members of the underrepresented sex to add a particular sport or squad, or to elevate an existing club or intramural sport to interscholastic sport status;

- v. Summaries of any assessments made during tryouts, or observations of students participating in club or intramural competition, and other information reflecting the ability of female students to compete in a particular sport, prior participation in that sport or a similar sport at the middle school or community level, general athletic ability, participation in other District interscholastic sports, the nature of the particular sport, and other relevant factors; and
- vi. Any other information that was considered by the District as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of female students at the School.

Action Item III: Process for Requesting Addition of New Sports or Levels of Sports

By August 31, 2022, the District will develop and adopt a process and written procedure for students or other interested parties, such as coaches or parents/guardians, to use in requesting the addition of new sports or levels of sports at the School. The process will be implemented upon approval by OCR, and notice and a copy of the procedure will be published with the electronic version of the student handbook (with changes to any printed version to be made with the next published revision) and included in the Athletic Department's policies and procedures/manual, and the individual responsible for responding to any requests will be identified by name and contact information. This information will also be displayed on the District's website. The District shall retain all requests for new sports or levels of sports made through the procedure or otherwise in written or electronic form for a minimum of ten years.

1. At the beginning of each school year, the District will provide written notice to coaches, physical education teachers, guidance counselors and principals, of all sports offered at the School. This information also will be posted on the District's website.
2. At the beginning of each school year, the District will provide a written description of all of its sports offerings to all School students in their physical education classes. This information also will be posted on the District's website.
3. The District will maintain the interscholastic athletic squad lists, which shall reflect the participation numbers for each sport, by sex, as of each team's first and last competitive event. These records will not be destroyed or otherwise altered so that they can be submitted to OCR consistent with the terms of this agreement.
4. By August 31, 2022, August 31, 2023, and August 31, 2024, the District will provide to the Athletic Director and designated Title IX Coordinator written instructions describing the District's obligations under the terms of this agreement, and also outlining the District's internal procedures and guidelines for ensuring that the District timely, completely and accurately documents its compliance with the terms of this agreement.
5. By August 31, 2022, and on an annual basis thereafter, the District will provide to the Title IX Coordinator and coaches training on the relevant requirements of Title IX as they pertain to the provision of equal athletic opportunities to boys and girls.

Reporting Requirements:

- a) By September 30, 2022, the District will submit to OCR, for review and approval, a copy of its draft procedure for requesting new sports or levels of sports. OCR will respond within 30 calendar days.
- b) By December 31, 2022, the District will provide documentation to OCR demonstrating that the procedure for requesting new sports or levels of sports has been adopted and disseminated to students and staff; including a link to the District’s website where this information may be found.
- c) By December 31, 2023, and December 31, 2024, the District will provide documentation to OCR demonstrating that the procedure for requesting new sports or levels of sports has been implemented during the past academic year, including copies of any requests and the responses to those requests.
- d) By December 31, 2022, the District will provide OCR with a copy of the notices provided to coaches and students, as required by Action Item III (1) and (2), above, and a link to the location on its webpage where the notices are located.
- e) By December 31, 2022, December 31, 2023, and December 31, 2024, the District will provide documentation to OCR that it has implemented Action Item III (3) of this agreement, including copies of the squad lists.
- f) By December 31, 2022, December 31, 2023, and December 31, 2024, the District will provide documentation to OCR that it has implemented Action Item III (4) of this agreement, including copies of the instructions and applicable internal procedures and guidelines, along with proof of receipt of the required information by the Athletic Director and Title IX Coordinator.
- g) By December 31, 2022, December 31, 2023, and December 31, 2024, the District will provide documentation to OCR demonstrating that it has provided the required training pursuant to Action Item III (5) of this agreement, including copies of the materials provided to the Title IX Coordinator and coaches and any sign-in sheets showing attendance at the meeting.

By signing this Agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the resolution agreement. Further, the District understands that during the monitoring of the agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of the resolution agreement. The District understands that OCR will not close the monitoring of this resolution agreement until OCR determines that the District has demonstrated compliance with all the terms of this agreement and is in compliance with Title IX and its implementing regulations at 34 C.F.R. Part 106, which were at issue in this case.

The District understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of the resolution agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This resolution agreement will become effective immediately upon the signature of the District's representative below.

7/12/22

/s/

Date

Dr. James Franchini
Superintendent
Averill Park School District