



**UNITED STATES DEPARTMENT OF EDUCATION**  
OFFICE FOR CIVIL RIGHTS  
32 OLD SLIP, 26<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

**TIMOTHY C. J. BLANCHARD**  
DIRECTOR  
NEW YORK OFFICE

April 23, 2019

Dr. Scott Ridley  
Superintendent  
Hazlet Township Public Schools  
421 Middle Road  
Hazlet, New Jersey 07730

Re: Case No. 02-18-1470  
Hazlet Township Public Schools

Dear Dr. Ridley:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Hazlet Township School District (the District). The complainant alleged that the District discriminates against female students, on the basis of sex, in its interscholastic athletics program at Raritan High School (the School), by failing to fully and effectively accommodate the interests and abilities of female students to the extent necessary to provide equal athletic opportunities to members of both sexes (Allegation 1). The complainant also alleged that the District discriminated against female students, on the basis of sex, by failing to approve their requests to hold fundraising events (Allegation 2).

OCR is responsible for enforcing 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.

With respect to Allegation 1, the complainant alleged that the District discriminates against female students, on the basis of sex, in its interscholastic athletics program at the School, by failing to fully and effectively accommodate the interests and abilities of female students to the extent necessary to provide equal athletic opportunities to members of both sexes. In support of his allegation, the complainant asserted that female students are underrepresented in athletics at the School; the District is not accommodating the interests and abilities of female athletes; and, the District has declined requests in the past several years to start a girls' lacrosse team.

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. The regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1), states that in determining whether equal opportunities are available, OCR will consider, among other factors, whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes. OCR's Three-Part Test assesses athletic opportunities. The Three-Part Test furnishes three individual avenues for measuring compliance with the requirement to provide individuals of each sex with nondiscriminatory opportunities to participate in intercollegiate athletics. 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.

OCR applies the Three-Part Test as follows to assess whether an institution is providing equal participation opportunities for individuals of both sexes:

- i. Whether athletics participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- ii. Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex; or
- iii. Where the members of one sex are underrepresented among athletes and the institution 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 has provided each sex with equitable opportunities to participate. If an institution's athletic program also equitably provides each sex with the level of competition reflective of their respective abilities, OCR will determine that the institution has effectively accommodated athletic interests and abilities.

In addition to determining whether male and female students are afforded equitable opportunities to participate, OCR also will assess the following factors to determine whether the quality of competition provided to male and female athletes equally reflects their abilities:

- i. Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities.

- ii. Whether the District can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

If an institution meets any one part of the Three-Part test, and can also demonstrate that it provides an equitable level of competition to athletes of each sex, OCR will determine that the institution has effectively accommodated the athletic interests and abilities of the underrepresented sex.

In its investigation, OCR collected and analyzed enrollment and athletic participation data for school years 2015-2016, 2016-2017 and 2017-2018. OCR also reviewed documentation that the complainant and District submitted. In addition, OCR interviewed the complainant, the School's athletic director, the School's dance team coaches, and the cheerleading coach. OCR made the following determinations.

OCR examined whether the District provides male and female students an equal opportunity to participate in its intercollegiate 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.

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

In comparing enrollment and athletic participation data from the District for school years 2015-2016, 2016-2017, and 2017-2018, OCR examined the rosters for all sports offered at the School. 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 New Jersey State Interscholastic Athletic Association (NJSIAA) eligibility lists the District submitted.

During school years 2015-2016, 2016-2017, and 2017-2018, the District offered 10 boys' sports (baseball, basketball, cross-country, football, soccer, swimming & diving, tennis, winter/indoor track, spring/outdoor track, and wrestling); and, 10 girls' sports (softball, basketball, cross-country, field hockey, soccer, swimming & diving, tennis, winter/indoor track, spring/outdoor track, and volleyball). All of these sports were at the interscholastic (not intramural or club) level.

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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.

School Year 2015-2016

In school year 2015-2016, there were 960 students enrolled at the School. Approximately 53% of these students were male and approximately 47% were female. The School provided 399 (or 54.88% of the total) athletic opportunities for male students, and 328 (or 45.12% of the total) athletic opportunities for female students; for a total of 727 athletic opportunities.

Based on this information, OCR determined that in school year 2015-2016, male students had more athletic opportunities than female students. In order to achieve exact proportionality with male student athletic opportunities and overall enrollment, female student athletic opportunities would need to be increased by 30. OCR determined that the School had an average women's team size of 33 for school year 2015-2016. The underrepresentation of 30 athletes is fewer than the average team size of 33; thus, the District satisfied Part One for school year 2015-2016.

School Year 2016-2017

In school year 2016-2017, there were 950 students enrolled at the School. Approximately 53% of these students were male and approximately 47% were female. The School provided 476 (or 60.71% of the total) athletic opportunities for male students, and 308 (or 39.29% of the total) athletic opportunities for female students; for a total of 784 athletic opportunities.

Based on this information, OCR determined that in school year 2016-2017, male students had more athletic opportunities than female students. In order to achieve exact proportionality with male student athletic opportunities and overall enrollment, female student athletic opportunities would need to be increased by approximately 113. OCR determined that the School had an average women's team size of 31 for school year 2016-2017. The underrepresentation of 113 athletes is more than the average team size of 31; thus, the District did not satisfy Part One for school year 2016-2017.

School Year 2017-2018

In school year 2017-2018, there were 944 students enrolled at the School. Approximately 54% of these students were male and approximately 46% were female. The School provided 462 (or 59.69% of the total) athletic opportunities for male students, and 312 (or 40.31% of the total) athletic opportunities for female students; for a total of 774 athletic opportunities.

Based on this information, OCR determined that in school year 2017-2018, male students had more athletic opportunities than female students. In order to achieve exact proportionality with male student athletic opportunities and overall enrollment, female student athletic opportunities would need to be increased by approximately 79. OCR determined that the School had an average women's team size of 28 for school year 2017-2018. The underrepresentation of 79 athletes is more than the average team size of 28; thus, the District did not satisfy Part One for school year 2017-2018.

Prior to OCR's completing the investigation of Allegation 1, on April 16, 2019, the District signed the enclosed agreement to resolve Allegation 1 without further investigation pursuant to Section

302 of OCR’s Case Processing Manual.<sup>2</sup> 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 of Allegation 1. Upon the District’s satisfaction of the commitments made under the resolution agreement, OCR will close the case.

With respect to Allegation 2, the complainant alleged that the District discriminated against female students, on the basis of sex, by failing to approve their requests to hold fundraising events for the School’s dance and cheerleading teams. Specifically, the complainant asserted that the School’s dance team, which includes only female students, submitted 13 requests for fundraising events during fall 2018, none of which were processed or approved; these included a car show, a grocery bagging event and a car wash.<sup>3</sup> The complainant further stated that the District’s athletic director also has denied fundraising requests from the cheerleading team, which is nearly all female, because they might interfere with fundraising for the football team. The complainant asserted that there is a “massive discrepancy” in fundraising for boys’ teams as compared with girls’ teams. The complainant did not provide any further information in support of his allegation that the District had failed to approve fundraising requests by the dance team and the cheerleading team.

The District denied that it had failed to approve fundraising event requests for the dance or cheerleading teams. OCR determined that the dance team and the cheerleading team are designated as co-curricular activities, not sports. The District stated that it had processed and approved all fundraising requests during school year 2018-2019, irrespective of the sex of the students. According to School officials, the approval process for fundraising events requires that the coach submit a fundraising event request form for review and approval by the athletic director, the principal, and the assistant superintendent. The officials stated that the approval process generally takes a few days to a week. The approval process is the same for athletic teams and co-curricular activities like the dance team or cheerleading team.

The District provided to OCR copies of 40 fundraising requests made in school year 2018-2019, including five requests from the dance team and four requests from the cheerleading team, all of which were approved. Coaches for the fall (coach 1) and winter (coach 2) dance teams stated that the District approved all of their fundraising requests for school year 2018-2019.<sup>4</sup> Coach 1 stated that for school year 2018-2019, she requested and was approved for three fundraising events: a car wash, a bake sale at a home football game,<sup>5</sup> and a dance clinic for elementary school students. Coach 2 stated that during school year 2018-2019, she requested and was approved for two fundraising events: the team bagged groceries and sold mixed designer bags. Coach 2 stated that she had submitted two additional fundraising request forms in school year 2018-2019, but withdrew both. Specifically, coach 2 submitted a fundraising request form to hold a raffle, but withdrew the request after she learned she would need a gaming permit, and because team members decided that they did not want to sell raffle tickets; and, a request to hold a car show

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<sup>2</sup> OCR has not made any determinations as to whether the District satisfied Parts Two or Three of the Three-Part Test.

<sup>3</sup> The complainant asserted that another parent (parent 1) advised him that the District had denied the dance team’s fundraising requests. OCR requested parent 1’s contact information from the complainant; however, the complainant advised OCR that parent 1 preferred not to participate in OCR’s investigation.

<sup>4</sup> Coach 1 stated that in her three years of coaching, all the fundraising requests she has submitted have been approved.

<sup>5</sup> Coach 1 stated that the dance team originally intended to sell baked goods at all the home football games; however, the dance team decided not to continue the bake sales because they did not raise much money at the first game and there were not enough dance team members who wanted to bake for subsequent games.

fundraiser, but withdrew the request after the parent who had suggested the fundraiser (parent 2) advised her that he no longer wanted to proceed with the fundraiser. Both coach 1 and coach 2 stated that their fundraising events were sufficient to meet the team's needs.

With respect to the cheerleading team, the cheerleading coach (coach 3) stated that the District had approved all her fundraising requests made during her ten years of coaching. Coach 3 stated that, among other things, the team fundraised for clothing and for scholarships for seniors on the team. She stated that during school year 2018-2019, the team held four fundraisers, which raised more than sufficient money to meet the team's needs.

Based on the foregoing, OCR determined that, contrary to the complainant's assertions, the District processed and approved all fundraising requests that the dance and cheerleading teams submitted for school year 2018-2019. OCR determined that two dance team fundraising events, the raffle and the car show, did not take place; however, this was not due to the District's denial of the dance team's requests. Rather, coach 2 withdrew her requests because the dance team determined that it was not interested in proceeding with the events. Furthermore, coaches 1, 2 and 3 all stated that they had not experienced any difficulty in obtaining approval for fundraising requests, and they were able to raise the funds they needed for their respective teams. OCR did not find any evidence indicating that the District treated the dance team or cheerleading team differently, based on sex, with respect to processing fundraising requests. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against female students, on the basis of sex, by failing to approve their requests to hold fundraising events for the School's dance and cheerleading teams. Accordingly, OCR will take no further action with respect to Allegation 2.

OCR will monitor the District's implementation of the resolution agreement (the Agreement) regarding Allegation 1. Upon completion of the obligations under this Agreement, OCR will close this case. If the District fails to implement the Agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the Agreement. Before initiating administrative (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the breach.

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

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information 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 with respect to Allegation 2, within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information 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 your 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 any questions regarding OCR's determination, please contact Andy Artz, Compliance Team Attorney, at (646) 428-3901 or [alexander.artz@ed.gov](mailto:alexander.artz@ed.gov); R. Colin Power, Compliance Team Attorney, at (646) 428-3832 or [r.colin.power@ed.gov](mailto:r.colin.power@ed.gov); or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or [anna.moretto.cramer@ed.gov](mailto:anna.moretto.cramer@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Michael J. Gross, Esq.