



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 6, 2018

IN RESPONSE, PLEASE REFER TO: 03171333

Via U.S. Mail and E-mail: rkinder@tamaqua.k12.pa.us

Mr. Raymond J. Kinder
Superintendent
Tamaqua Area School District
138 West Broad Street
Tamaqua, PA 18252

Dear Mr. Kinder:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Tamaqua Area School District (the District). The Complainant alleged that the District discriminates on the basis of sex by scheduling the middle school girls' basketball team to compete during the fall season, while the middle school boys' basketball team competes during the winter season.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX and its implementing regulations.

Legal Standards

Under Title IX, at 34 C.F.R. § 106.31(a), discrimination on the basis of sex in education programs and activities is specifically prohibited. Based on that regulatory provision, a recipient has a general duty to provide a nondiscriminatory educational environment.

In order to establish a violation of Title IX, OCR would have to find that the students were treated differently than similarly-situated students on the basis of sex in a way that limited the students' opportunity to participate in or benefit from a school program or activity, and that either the District cannot articulate a legitimate nondiscriminatory reason for the different treatment or that the District has articulated a legitimate

nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR examines whether the District treated the students in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination based on sex.

The Title IX regulations governing athletics state, in relevant part: “No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient.” See 34 C.F.R. § 106.41(a).

Factual Background

The following sports are offered to the girls at the District’s Tamaqua Middle School (MS):

- Fall: cross country, basketball (8th grade and 7th grade teams)
- Winter: none
- Spring: track and field

The following sports are offered to MS boys:

- Fall: cross country, football
- Winter: basketball (8th grade and 7th grade teams), wrestling
- Spring: track and field

The District offers the following High School (HS) sports:

- Fall sports: boys’ football; boys’ and girls’ cross country; boys’ and girls’ soccer, girls’ volleyball; boys’ golf; and girls’ tennis
- Winter Sports: boys’ basketball (varsity, JV and 9th grade), girls’ basketball (varsity and JV), boys’ wrestling, boys’ and girls’ swimming and diving
- Spring Sports: boys’ baseball; girls’ softball; and boys’ and girls’ track and field

The Complainant alleges that MS girls have to choose whether to play District-sponsored basketball or non-District-sponsored soccer in the fall. Soccer is offered through a local recreational league at the Tamaqua Area Soccer Association for girls in grades 2-8.

The Complainant reported that, during the 2017-18 school year, there were eight girls who played both recreational soccer and District basketball in fall 2017. He said that even though the soccer team is not a District-sponsored team, the District supports it because it wants girls who can play on the HS soccer team (soccer is a fall sport at the District High School). The Complainant reported to OCR that he is aware of girls whose parents made them choose which sport to play (basketball or soccer) because of how much time it would take to play both sports during the same season and the adverse effect it would have on their grades. In addition to the adverse harm of girls having to choose which sport to play during the fall season, the Complainant noted that, because

MS girls' basketball is played in the fall and there are no sports offered to the MS girls in the winter, the girls have no sports to play in the winter and there is an unmet athletic interest during the winter season.

The District offered the following five reasons to OCR for having girls' MS basketball as a fall sport:

Head coach influence – The District reported to OCR that requests had been made to have and maintain the MS girls' basketball program in the fall season to allow the coaching staff from the varsity and JV programs to also serve as MS coaches. The District asserted that this allowed for the best coaches in the program to provide the best coaching to the MS girls.

Coaching availability – The District stated that girls' basketball coaches have found it nearly impossible to find qualified, knowledgeable coaches during the winter season.

Ability to provide full competitive schedule – According to the District, only two schools in the District's league/surrounding area offer MS girls' basketball in the winter. The District stated that, although it would be able to provide some competitions, it is unlikely to match the number of contests it can provide to MS girls in the fall season.

Ability to provide maximum gym availability – The District asserted that, with far less teams requiring use of the District's limited gymnasiums, the fall season allows the coaching staff to maximize access to quality facilities for the MS girls' basketball team.

Travel time to competitions – If the MS girls' basketball schedule were to be moved to the winter season, according to the District, any teams the District would be able to play would most likely be from a larger geographical region. The District asserted that this would result in adverse consequences academically as students would have to leave school earlier for contests and arrive home later than they are currently.

On May 5, 2018, the District requested to resolve this complaint prior to the conclusion of OCR's investigation. Accordingly, OCR ended its investigation prior to further questioning the reasons the District provided in support of the season for MS girls' basketball, as would be necessary to make a compliance determination in this complaint.

Request to Resolve Complaint through a Voluntary Resolution Agreement

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement and OCR determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegations, the information obtained in the investigation to date, and be consistent with applicable

regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on May 5, 2018, the District requested to resolve the complaint through a Resolution Agreement. On August 6, 2018, the District signed this Agreement. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Title IX, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

If you have any questions, please contact Sarah Haake at (215) 656-6416 or by email at sarah.haake@ed.gov or me at 215-656-8522 or by email at vicki.piel@ed.gov

Sincerely,

/s/

Vicki Piel
Team Leader

Enclosure