

RESOLUTION AGREEMENT
Upper Perkiomen School District
Case Number 03-18-1175

The U.S. Department of Education, Office for Civil Rights (OCR) and the Upper Perkiomen School District (District) enter into this Resolution Agreement (Agreement) to resolve the issues in this above-referenced complaint. This Agreement does not constitute an admission of liability, nor does it constitute a finding of non-compliance or wrongdoing on the part of the District. The District assures OCR that it will take the following actions to comply with the requirements of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* (Title IX), and its implementing regulations at 34 C.F.R. Part 106. The District is a recipient of Federal financial assistance and is therefore subject to the requirements of Title IX.

Prior to the completion of OCR's investigation, the District agreed to resolve the issue of this investigation pursuant to Section 302 of OCR's *Case Processing Manual*. Accordingly, to resolve the issues of this investigation, the District agrees to take the following actions:

I. POLICY AND ASSESSMENT OF HIGH SCHOOL ATHLETIC PROGRAM

- A. The District will develop a policy setting forth the process by which it will review requests (whether oral or written, formal or informal) made to District administrators, coaches, or staff by or on behalf of students to add a particular sport, squad, level of sport, or to elevate an existing intramural sport or club sport, if any, to high school interscholastic sport status. The policy will describe the procedure for requesting additional sports, the designation of the person responsible for receiving and responding to such requests, and the District's plans, methods, and efforts to ensure wide distribution of the policy and procedure to students, as well as to coaches and other employees. A copy of the District's draft policy will be submitted to OCR for its review and approval before being adopted by the District, published, and disseminated. When submitting the draft policy to OCR for review and approval, the District will also describe the method it will use to publish and effectively disseminate the policy and procedure to its students.

Reporting Requirement: By **February 1, 2019**, the District will provide, for OCR's review and approval, a copy of the District's policy setting forth the process by which it will review requests to add additional, or elevate existing, high school sports and the District's plan to ensure wide distribution of such policies and procedures to students, as well as to coaches and other employees. Within 30 days of receiving OCR's approval, the District will implement and disseminate the policy.

II. ACCOMMODATION OF ATHLETIC INTERESTS AND ABILITIES

The District agrees to provide participation opportunities in its high school interscholastic athletics program for female and male students that equally and effectively accommodate the athletic interests and abilities of members of both sexes, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). As such, the District will provide athletic participation opportunities that are either substantially proportionate to each

sex's enrollment, or demonstrate that the interests and abilities of female students are fully and effectively accommodated by the District's current athletics program.

Accordingly, the District opts to demonstrate compliance with Part III of the Three-Part test used by OCR to assess whether the interests and abilities of members of both sexes are being effectively accommodated to the extent necessary to provide an equal opportunity to participate in interscholastic athletics by documenting that:

- The interests and abilities of students who are members of the underrepresented sex have been fully and effectively accommodated by the District's current interscholastic athletics program (Part III).
- Part III of the Three-Part Test is a sufficient method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. Accordingly, by no later than the 2019-2020 academic year the District will demonstrate compliance with either Part III of the Three-Part Test, as follows: The assessment will be based on multiple indicators of interest and ability, including:
 1. Administration of a survey or other assessment tool of all high school students as well as incoming high school students (Student Survey) using a method that is designed to fully and accurately assess unmet athletic interests and abilities in high school interscholastic sports among female students. A copy of the District's draft survey or other assessment tool will be submitted to OCR for its review and approval before being distributed to students. The District will make revisions to the survey as advised by OCR. Upon OCR's written approval, the District will administer the survey, endeavoring to generate as high a response rate as possible, including following up with students who do not respond.
 2. Identification of any sports, squads, and levels of sports for high school female students that are not currently offered by the District that are offered by schools that compete within the athletic conference in which the District competes and by schools that are within the District's normal competitive region.
 3. Reviewing rates of participation by high school female students in club and intramural sports, if any, in the District.
 4. Reviewing any requests (whether oral or written, formal or informal) made to District administrators, coaches, or staff by or on behalf of high school female students to add a particular sport, squad, or level of sport, or to elevate an existing intramural sport or club sport, if any, to high school interscholastic sport status.
 5. Examination of the participation rates of high school female students in interscholastic sports, amateur athletic associations, and community sports leagues that operate in the Montgomery county area.
 6. To the extent applicable, reviewing the number of high school students cut from any girls' team in the last three years and the reasons they were cut, to assess whether any of

the students who were cut have the ability and interest to compete at the interscholastic level in that or another sport and whether sufficient numbers of students who were cut could sustain a District intramural or club sport.

7. Examination of assessments made by District coaches or staff during tryouts, or observations of high school students participating in intramural competition, and other information reflecting the ability of high school female students to compete in a particular sport, prior participation in that sport or a similar sport at the intramural or club level, general athletic ability, participation in other sports, the nature of the particular sport, and other relevant factors. (Neither a poor competitive record, nor the inability of interested students or incoming high school 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 interested students and incoming high school students have the potential to sustain an interscholastic team.)
8. Consideration of any other information that demonstrates the athletic interests and abilities of the District's high school female students.

Reporting Requirements:

1. By **October 15, 2018**, the District will provide a copy of the draft Student Survey referenced in Section II above, for OCR's review and approval.¹
2. By **October 15, 2018**, the District will provide to OCR a complete description of the planned methodology for conducting the Student 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 prepared the survey, the individuals who will evaluate the responses to the surveys, and the protocol for retaining copies of any notes or other documents compiled during the review of the student survey.
3. Within **45 days** after the Student Survey is approved, the District will administer the OCR approved Student Survey, unless there is less than two weeks of school left. In that case, the survey will be administered no later than the end of the third full week of school after school starts in the fall.
4. Within **45 days** after the approved Student Survey is administered, the District will provide to OCR for review and approval a detailed report summarizing results of the District Assessment conducted by the District pursuant to Section II of this Agreement. The report will include, at a minimum, the following information and/or supporting documentation:
 - a. a copy of the results of the Student Survey referenced in Section II above, including

¹ The District presently conducts an activities survey, which surveys District students on their current extracurricular participation, and what activities not offered they would like to see added. The District may review and revise its activities survey for purposes of completing the Student Survey.

- but not limited to, the number of students by sex who indicated an interest in each sport, a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, any follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who evaluated the responses to the survey, and a copy of any notes or other documents compiled during the review of the student survey;
- b. an analysis of the results of the Student Survey or other information collected from students using a method that is designed to fully and accurately assess unmet high school athletic interests, and if applicable, abilities in high school interscholastic sports among female students;
 - c. a list of sports, squads, and levels of sports for high school female students that are not currently offered by the District but are offered either by schools that compete within the athletic conference in which the District competes or by schools that are within the District's normal competitive region and geographic area;
 - d. copies of any written requests and a summary of any non-written requests made by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing club sport to high school interscholastic sport status;
 - e. a summary of any assessments made by coaches or staff during tryouts, or other information reflecting the ability of high school female students to compete in a particular sport, prior participation in that sport or a similar sport at the high school interscholastic level or club or intramural level, general athletic ability, the nature of the particular sport, and other relevant factors; and
 - f. the District's analysis and conclusions as to whether the District is fully and effectively accommodating the athletic interests and abilities of high school female students.

III. ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

- A. If the District is unable to demonstrate compliance pursuant to Part III - Effective Accommodation of Interests and Abilities, then the District, using the results of the District Assessment, will submit its detailed plan with timeframes to effectively accommodate the interests and abilities of high school female students to the extent necessary to provide equal opportunity in its high school interscholastic athletics program by the **2020-2021** school year. The District's detailed plan will include the steps noted below. In addition, the plan will include a description of interim steps that will be taken by the District during the **2019-2020** school year to increase interscholastic athletic participation opportunities for high school female students. The District also agrees to conduct periodic assessments of the athletic interests and abilities of its high school students in subsequent years to ensure it is equally and effectively accommodating the athletic interests and abilities of its male and female students 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. In developing its plan to ensure it is equally and effectively accommodating the athletic interests and abilities of its male and female high school students, the District will undertake the following steps:

1. Sports currently offered: The District will review the squad sizes of current teams to identify opportunities to increase participation opportunities for high school female students to the maximum extent feasible consistent with the nature of each sport and the level of interest in each sport while still ensuring that meaningful interscholastic athletic participation opportunities are being provided for all team members.
2. Sports not currently offered: The District will determine whether there are a sufficient number of high school female students with the interest and ability to support the addition of a team in sports not currently offered by the District as interscholastic sports and sufficient competition in those sports within the District's normal competitive region. If so, the District will add a team in those sports and will hire a coaching staff, recruit student athletes, and provide these student athletes equivalent treatment, benefits and service, including sufficient resources to the coaching staff during the **2019-2020** school year to ensure that each team begins competition no later than the **2020-2021** school year, consistent with the above determination.
3. Response to developing interests and abilities: For any high school sport that is not currently offered by the District in which there are 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 region, the District will take ongoing steps to address such interest and ability. Steps may include establishment of intramural or club sports, exploring the establishment of competition in the District's normal competitive region, and elevating such sports to interscholastic status when competition becomes available.
4. Elimination of athletic teams: The District acknowledges that OCR does not require or encourage the elimination of any District high school 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 or the Three-Part Test requires an institution 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. The District acknowledges that Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.
5. Additional interscholastic opportunities: To the extent that the District adds any sports, the District will provide those team(s), in a manner comparable to other high school interscholastic teams, with sufficient funds in its budget, to ensure equal opportunities, to cover expenses including, but not limited to: coaches, equipment and supplies, travel, publicity, and support services.

Reporting Requirements:

1. Within **45 days** after submitting the detailed report summarizing the results of the District Assessment conducted by the District pursuant to Section II of this Agreement, the District will provide to OCR for review and approval a copy of its detailed report that includes information and supporting documentation demonstrating the plan required above will effectively accommodate the interests and abilities of members of both sexes. The plan will include a description of the interim steps that will be taken by the District during the **2019-2020** school year to increase high school interscholastic athletic opportunities for the underrepresented sex.
2. By **June 30, 2019**, and **December 31, 2019**, the District will provide 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 a coaching staff has been hired for any new high school teams being added by the District, and a copy of the detailed budget provided to the teams to ensure they are able to begin competition during the **2020-2021** school year.
3. By **June 30, 2020**, the District will provide OCR, for OCR's review and approval, a report that includes information demonstrating that its high school interscholastic athletics program equally and effectively accommodates the athletic interests and abilities of its high school female students.

IV. Scheduling of Games and Practice Time

- A. The District agrees to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the scheduling of games and practice time consistent with the requirements of Title IX at (34 C.F.R. §106.41(c)(3)).

Reporting Requirements:

1. By **May 15, 2019**, the District will complete an assessment of its competitive events and practice schedules to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will consider, at a minimum, whether the District's girls' interscholastic athletic teams are provided with comparable opportunities as provided to the boys' interscholastic athletic teams in the number of competitive events per sport, number and length of practice opportunities, time of day competitive events are scheduled, time of day practice opportunities are scheduled, *including whether girls' practices or games are canceled and/or rescheduled due to poor facility conditions*, and opportunities to engage in available pre-season and post-season competition.
2. By **May 15, 2019**, if the District determines that the girls' and the boys' athletic teams are not receiving comparable scheduling for competitive events and/or practice times, the District will develop and, once approved by OCR, implement a

plan to ensure that female and male student athletes are provided with equivalent benefits and services in this area. If the District determines that the competitive events and/or practice times currently provided to the girls' and boys' athletic programs are comparable, the District will provide to OCR a report outlining that determination and the information, including appropriate documentation upon which it is based.

V. Availability, Assignment, and Compensation of Coaches

- A. The District agrees to provide equivalent benefits and opportunities to female and male student athletes with respect to the availability, assignment, and compensation of coaches consistent with the requirements of Title IX at (34 C.F.R. § 106.41(c)(5) & (6)).

Reporting Requirements:

1. By **May 15, 2019**, the District will complete an assessment of the assignment, availability, and compensation of coaches² to ensure the equivalent assignment, availability, and compensation of coaches for the girls' and boys' athletic programs. The assessment will also include, at a minimum:
 - a. A list of the members of any athletic department hiring committees who were actively engaged in hiring and/or recruitment during the 2018-2019 school years;
 - b. A review of all coaching assignments, with the following information regarding the assignments:
 - i. head coach and/or assistant coach;
 - ii. full-time or part time as coach, and indicate percentage of full-time;
 - iii. *an assessment whether coaches of a particulate team regularly fail to attend practices and/or games;*
 - iv. length and type of contract or appointment;
 - v. other non-coaching duties and indicate the percentage of time;
 - vi. a summary of each coach's background and qualifications;
 - vii. years of experience; and,
 - viii. salary, stipend, or hourly compensation for coaching.

² OCR does not enforce the Equal Pay Act; therefore, the terms of this agreement are limited to a review of compensation practices to determine whether student athletes are receiving equivalent quality and quantity of coaching under OCR's interpretation and application of the Title IX regulations at 34 CFR § 106.41(c)(6).

Reporting Requirements:

1. By **May 15, 2019**, if the District determines that the boys' and the girls' athletic teams are not receiving comparable benefits and opportunities with respect to coaching, the District will develop and, once approved by OCR, implement a plan to ensure that female and male student athletes are provided with equivalent benefits and services in this area. If the District determines that the coaching currently provided to the women's and men's athletic programs are comparable, the District will provide to OCR a report outlining that determination and the information, including appropriate documentation upon which it is based.

VI. LOCKER ROOMS, PRACTICE, AND COMPETITIVE FACILITIES

The District agrees to provide equivalent benefits and opportunities to high and high school female and male student athletes with respect to access to locker rooms, practice fields and facilities, and competitive fields and facilities consistent with the requirements of Title IX at 34 C.F.R. § 106.41(c)(7).

- A. The District will complete a comprehensive assessment of any projects associated with athletics. The assessment will include, at a minimum, a list of all anticipated new or renovated locker rooms, practice fields and facilities, and competitive fields and facilities, including:
 1. a description of each facility, which teams will be using the facility, and a timeline for expected completion;
 2. if available, a map of each anticipated facility, with dimensions. If not available, a description of the facility including general sizing and location information;
 3. proximity of locker rooms to the practice and competitive facilities;
 4. amenities for each locker room (e.g., showers, laundry service, available trainers, accommodations for visiting teams);
 5. which team(s) have exclusive use of locker rooms and/or which locker rooms are to be shared between teams and how scheduling will be coordinated if seasons overlap including how long the locker rooms are assigned for use by each team;
 6. amenities for each practice and competitive field and facility (e.g., concession facilities, weight rooms, public address systems, electronic scoreboards, special lighting on the fields, internet connections, seating and housing at each field or facility, maintenance of each field or facility, preparation of each practice and competitive field);
 7. whether certain teams or programs have exclusive use of the facility or any part thereof; and
 8. schedules showing when facilities are used for practice and competition.

Reporting Requirements:

1. By **May 15, 2019**, the District will provide to OCR for its review and approval, a copy of the comprehensive assessment. OCR will review the assessment and provide feedback. To the extent OCR requires any changes that are possible given the construction timeline, the District will provide OCR a plan to address those changes within 30 days of receiving

OCR's feedback.

VII. PUBLICITY

- A. The District agrees to provide equivalent benefits and opportunities to female and male student athletes with respect to publicity consistent with the requirements of Title IX at 34 C.F.R. § 106.41(c)(10).

By **May 15, 2019**, the District will complete an assessment of publicity services to ensure that female and male student athletes are provided with equivalent benefits and services in this area. The assessment will include, at a minimum:

1. A review of all publications and promotional materials of the athletic department available to the general public and/or distributed to students, staff, and alumni, including press releases, press guides, recruitment brochures, schedule cards, samples of game programs, and similar publications and/or promotional materials for each girls' and boys' team.
2. A review of the types of publicity or promotional services the institution makes available to the girls' and boys' athletic programs.
3. The experience and qualifications of sports information personnel and the teams to which each person is assigned.
4. The dates that media guides are made available and distributed to the public for each team.
5. *Cheerleading support by team.*

Reporting Requirements:

1. By **May 15, 2019**, if the District determines that the publicity currently provided to the girls' and boys' athletics programs is not comparable, the District will develop and, once approved by OCR, implement a plan to ensure that female and male student athletes are provided with equivalent benefits and services in this area. If the District determines that access to publicity is comparable, the District will provide to OCR a report outlining that determination and the information, including appropriate documentation, upon which it is based.

VIII. CONCLUSION

The District understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this 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 this Agreement and is in compliance with Title IX and its implementing regulation, at 34 C.F.R. Section 106.41. Upon completion of the obligations under this Agreement, OCR shall close this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

/s/

9/11/18

Alexis McGloin, Ed.D.
Superintendent, Upper Perkiomen School District

Date