



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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June 25, 2020

**IN RESPONSE, PLEASE REFER TO: 03191345**

Via email only: [dion.betts@casdonline.org](mailto:dion.betts@casdonline.org)

Dr. Dion Betts, Superintendent  
Chambersburg Area School District  
435 Stanley Avenue  
Chambersburg, PA 17201

Dear Dr. Betts:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Chambersburg Area School District (the District). The Complaint alleges that the District discriminated on the basis of sex by:

1. Approving approximately \$70,000 to be spent on equipment for a weight room to be used by the boys' football team, whereas the other District teams will continue to use the general weight room;
2. Providing the boys' baseball team with a superior field and scoreboard compared to the girls' softball team;
3. Providing pre-game meals to the boys' football team, whereas no other team receives a pre-game meal;
4. Transporting the girls' softball team to practice and games in overcrowded buses, while the boys' baseball team is transported to practices and games in buses less crowded; and
5. Permitting the boys' baseball team to operate and retain the money earned by the concession stand, whereas the girls' softball team's concession stand is operated by local businesses who retain the money earned.

Consistent with OCR's procedures, we investigated the following:

- a. whether the District provides equal opportunities with regard to medical and training facilities and services for male and female athletes in its interscholastic athletic program (see allegation (1) above);
- b. whether the District provides equal opportunities with regard to locker rooms, practice and competitive fields for male and female athletes in its interscholastic athletic program (see allegation (2) above);
- c. whether the District provides equal opportunities with regard to housing and dining facilities and services for male and female athletes in its interscholastic athletic program (see allegation (3) above);

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

- d. whether the District provides equal opportunities with regard to travel and per diem allowance for male and female athletes in its interscholastic athletic program (see allegation (4) above).
- e. whether the District discriminates against the girls' softball team on the basis of sex because it permits the boys' baseball team to operate and retain the money earned by its concession stand, whereas the girls' softball team's concession stand is operated by local businesses who retain the money earned (see allegation (5) above).

OCR enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex by recipients of Federal financial assistance. Because the District receives Federal financial assistance from the Department, the District is subject to Title IX and its implementing regulations.

### **Legal Standards**

34 C.F.R. § 106.31(a), requires that a recipient may not discriminate on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. Subsection (b) of the same states that a recipient may not, on the basis of sex, subject any person to separate or different rules of behavior, sanctions, or other treatment in providing an aid, benefit, or service.

34 C.F.R. § 106.41 prohibits discrimination in athletics. 34 C.F.R. § 106.41(a) provides that 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, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), requires a recipient to provide equal athletic opportunity for members of both sexes, including at 34 C.F.R. § 106.41(c)(4), in the provision of travel and per diem allowance, 34 C.F.R. § 106.41(c)(7), in the provision of locker rooms, practice and competitive facilities, at 34 C.F.R. § 106.41(c)(8), in the provision of medical and training facilities and services, and at 34 C.F.R. § 106.41(c)(9), in the provision of housing and dining facilities and services.

In determining compliance in the provision of each of the above elements, OCR specifically assesses the factors outlined in the "Intercollegiate Athletics Policy Interpretation," issued December 11, 1979 (Policy Interpretation). For each element, OCR specifically assesses the following:

- provision of travel and per diem allowance: modes of transportation, housing and dining arrangements furnished during travel, length of stay before and after competitive events, and per diem allowances;
- provision of locker rooms, practice and competitive facilities: the quality and availability of locker rooms and the quality, availability, exclusivity, maintenance and preparation of practice and competitive facilities;
- provision of medical and training facilities and services: availability of medical personnel and assistance; health, accident and injury insurance coverage for athletic participants; weight and conditioning facilities; availability and qualifications of athletic trainers; and quality and availability of training facilities;

- provision of housing and dining facilities and services: the equivalence for men and women of the housing and dining facilities and services or other related special services provided for student athletes.

In analyzing each element, OCR examines whether the same or similar benefits or services are provided for all students or, if not, whether the differences negatively affect students of one sex, resulting in a “disparity.” When disparities are identified between the boys’ and the girls’ teams, e.g., if a boys’ team received a superior benefit in some way, OCR considers whether the benefit provided to the boys’ program was offset by an unmatched benefit to any of the teams in the girls’ program. In making this “program-wide” comparison, and before OCR concludes that a benefit to one of the teams in the girls’ program offsets a benefit provided to one of the teams in the boys’ program, OCR considers whether the offsetting benefits were equivalent or equal in effect.

If OCR identifies disparities, and if it finds no evidence of offsetting, we consider whether the differences between the benefits provided to the boys’ and girls’ programs are negligible. Where the disparities are not negligible, OCR examines whether they were the result of legitimate, nondiscriminatory factors. If OCR finds no legitimate, nondiscriminatory reasons for the disparities, OCR then determines whether the identified disparities resulted in the denial of equal opportunity to male or female athletes, either because the disparities collectively were of a substantial and unjustified nature or because the disparities in the program component were substantial enough by themselves to deny equal athletic opportunity. The result of this comparison is not to ensure identical benefits, opportunities, or treatment, but rather, to ensure that, overall, the athletics program provided equivalent benefits to boys and girls.

Finally, a school district has a responsibility under Title IX to ensure that equivalent benefits and services are provided to members of both sexes in its athletics programs, regardless of their funding source(s) for these benefits and services. Thus, OCR considers benefits and services provided through the use of private funds, including booster club funding, in combination with all other benefits and services. Where booster clubs provide benefits or services that assist only teams of one sex, the district must ensure that teams of the other sex receive equivalent benefits and services. If booster clubs provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the institution shall take action to ensure that benefits and services are equivalent for both sexes.

To establish a finding of different treatment under Title IX, OCR must determine that a student was treated differently than similarly-situated students on the basis of sex in a way that limited the student’s opportunity to participate in or benefit from a school program or activity, and that either the recipient cannot articulate a legitimate, nondiscriminatory reason for the different treatment, or the recipient has articulated a legitimate, nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, in making a determination as to whether discrimination occurred, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and practices and whether there is any other evidence of sex discrimination.

## **Factual Background**

The Complaint alleges Title IX inequities within the District’s High School athletic programs. The District has two secondary schools: Chambersburg Area Senior High School (CASHS) and Chambersburg Area Career Magnet School (CMS). CMS students complete on CASHS teams. CASHS has the following athletic teams:

Boys’ Teams: Soccer, Golf, Tennis, Cross Country, Football, Wrestling, Basketball, Swimming/Diving, Lacrosse, Track and Field, Baseball and Volleyball.

Girls’ Teams: Soccer, Golf, Tennis, Cross Country, Field Hockey, Cheerleading<sup>1</sup>, Basketball Swimming/Diving, Lacrosse, Track and Field, Softball and Volleyball.

During the 2018-19 school year, CASHS and CMS had approximately 2,800 students enrolled, with 744 students participating in athletic programs: 410 boys and 334 girls. These numbers include a student more than once if the student participated in more than one sport.

### **Allegation 1 – Medical and training facilities and services**

#### **Complaint’s Allegations**

The Complaint alleges inequities between the boys’ and girls’ athletic programs with respect to the District’s provision of weight and conditioning facilities at the CASHS. CASHS has a general weight room which, in the past, all of the athletes have used; however, the Complaint states that the District has recently built a new state-of-the-art weight room to be used only by the boys’ football team with no corresponding benefit to a girls’ athletic team.

#### **District’s Response**

According to the District, in 2018, the Varsity football coaching staff and football booster club approached the District’s athletic administration with the idea of creating a new weight room for the football team. The District informed OCR that the athletic administration and District administration were supportive because District personnel believed it would free up scheduling and access in the overcrowded Fieldhouse Weight Room that was used by all athletic teams.

At the District’s School Board meetings in 2019, the Board approved the purchase of equipment for the football weight room. The District entered into agreements with the football booster club, pursuant to which the club agreed to repay the District for the costs of the equipment to furnish the Football Weight Room.

#### **Quality and availability of weight and conditioning facilities**

The District stated that the following weight and conditioning facilities are available at CASHS:

- Fieldhouse Weight Room

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<sup>1</sup> OCR is not making a determination at this time as to whether the District’s cheerleading team counts as a sport for Title IX purposes.

- Football Weight Room
- Fieldhouse Cardio Room

The Fieldhouse Weight Room is located on the 2<sup>nd</sup> floor of CASHS next to the indoor track and the Fieldhouse Cardio Room. Both the Fieldhouse Weight Room and Fieldhouse Cardio Room are approximately 15 years old and available for use by all teams. The District provided the Fieldhouse Weight Room schedule for winter 2018-19 and times are shared by the boys' football team, the boys' basketball team, the boys' baseball team, the boys' volleyball team, the track and field team, and the girls' softball team. In spring 2019, the schedule provided by the District showed the boys' football team and the track and field team sharing the Fieldhouse Weight Room. In summer 2019, the boys' football team, the boys' and girls' basketball teams, and the boys' soccer teams shared the Fieldhouse Weight Room.

The District stated that, in December 2019, the boys' football team began using the Football Weight Room, located in the CASHS auxiliary gym on the 2<sup>nd</sup> floor. The District stated that the Football Weight Room will also be used by Physical Education Strength Training classes, once this is approved by Curriculum and Instruction. As of December 2019, only the boys' football team was using the Football Weight Room and all of the remaining athletic teams at CASHS, both boys and girls teams, continued to use the same, older weight room which the football team had also used previously and there was no weight room comparable to the Football Weight Room currently being used by any girls' teams.

#### Quality and availability of training facilities

OCR did not review information regarding the medical training facilities at CASHS.

#### Availability and qualifications of athletic trainers

The District contracts with Wellspan Health Services to provide certified athletic trainers at practices and events (on-campus and off-campus) for CASHS teams. Each trainer is assigned to support particular teams during the fall, winter, and spring seasons. The head athletic trainer travels with Varsity football to all away contests during the regular season and post-season, and a Certified Athletic Trainer travels with every team to post-season contests. The contract with Wellspan Health Services also allows for athletic trainers as needed to cover practices and/or events if a full-time certified athletic trainer is unavailable. In addition to the contracted athletic trainers, the District utilizes four student-athletic trainers.

#### Availability of medical personnel and assistance

The District also contracts with Wellspan Health Services for its team physician. The contract specifically provides for professional medical coverage during Varsity, Junior Varsity, and 9<sup>th</sup> grade football games and other events as mutually agreed upon. In addition, Wellspan provides concussion baseline testing to all student athletes. All first-time student athletes are tested and then retested every two years in grades 9 and 11.

Health, accident, and injury insurance coverage for athletic participants

The District's insurance policy covers all interscholastic student athletes at the District, including football. Insurance coverage is provided while an insured is participating in a sponsored and supervised activity, participating in preseason tryouts or regularly scheduled athletics games or competition or practices sessions, or traveling in transportation paid for or reimbursed by the District and proceeding directly to and from approved locations.

**Allegation 2 – Locker rooms, practice, and competitive fields**

Complaint's Allegations

The Complaint alleges that the boys' baseball team has a better field than the girls' softball team. The Complaint also alleges that the baseball scoreboard shows player names and statistics, whereas the softball scoreboard shows only shows runs, balls, strikes, and outs.

District's Response

The District rents the softball complex at Norlo Park in Guilford Township for use by both the Varsity and Junior Varsity softball teams. The scoreboard at the field used for District softball games displays home and visitor scores, current inning, balls, strikes, and outs, and hits and errors.

The District also rents the baseball complex at Greene Township Park for use by both Varsity and Junior Varsity teams. The scoreboard at the field used for District baseball games displays home and visitor runs scored by inning, balls, strikes and outs, hits and errors per team, and batter information. There is also a small message board that can display time and temperature, but often displays no game-related information.

Quality and availability of locker rooms

The District informed OCR that the CASHS athletic teams use the following locker rooms:

- CASHS Girls' Physical Education Locker Room: the girls' cross country, field hockey, and cheerleading teams share this locker room in the fall; the cheerleading team uses it in the winter; the girls' track and field and softball teams share it in the spring.
- CASHS Boys' Physical Education Locker Room: the boys' track and field and baseball teams share this locker room in the spring.
- CASHS Fieldhouse Girls' Team Room: the girls' soccer and volleyball teams share this locker room in the fall; the girls' basketball teams use it in the winter; the girls' lacrosse teams use it in the spring.
- CASHS Fieldhouse Boys' Team Room: the boys' football team uses this locker room in the fall; the boys' basketball and wrestling teams share the locker room during the winter; the boy's lacrosse and volleyball teams share it in the spring.
- CASHS Stadium Locker Room 1: the boys' soccer team uses this locker room in the fall.
- CASHS Stadium Locker Room 2: the boys' cross country team uses this locker room in the fall.
- There are locker rooms at the Chambersburg YMCA used by the girls' and boys' swimming and diving teams.

The District stated that CASHS locker rooms are assigned by District Administration on a per season (fall, winter, spring) basis.

Quality, availability, and exclusivity of use of practice and competitive facilities

CASHS athletic teams compete at three locations on CASHS's campus: the Stadium, the Fieldhouse, and the Auxiliary Gymnasium. The stadium has a large, electronic scoreboard and lights. It has spectator seating for 7,000 people on both sides and it is surrounded by a track. The District informed OCR that the Stadium dates back to 1955. Around 2005, the District repaired bleachers and installed artificial turf. The artificial turf and all-weather track were replaced in summer 2017. Football, cheerleading, boys' and girls' soccer, and girls' field hockey teams all share the Stadium in the fall. In the spring, boys' and girls' lacrosse and boys' and girls' track and field teams share the Stadium.

The Fieldhouse is an indoor gymnasium with seating for approximately 2,000 spectators. There is a three-lane suspended running track, spectator seating on both sides of the basketball court, and multiple scoreboards. In the fall, the girls' volleyball team and cheerleading compete in the Fieldhouse. In the winter, the boys' and girls' basketball teams, boys' wrestling team, and cheerleading share the Fieldhouse. The boys' volleyball team has exclusive use of the Fieldhouse in the spring.

The Auxiliary Gym is used for competitions by the boys' wrestling team and the boys' and girls' freshman basketball teams in the winter. The baseball team competes in the Auxiliary Gym in the spring. The District informed OCR that the Auxiliary Gym dates back to 1955.

All of the above teams practice and compete in these facilities, with the exception of the wrestling team which does not practice where it competes. The wrestling team competes in the Auxiliary Gym or Fieldhouse, but practices in the Adaptive Gym Room. The Adaptive Gym Room dates back to 2005-06 and is located at CASHS.

There is an additional field on CASHS' campus, known as Bus Peters field, used as a practice facility by the football team and the girls' field hockey team in the fall. In the spring, the boys' and girls' track and field teams practice there.

There are also several off-campus facilities used by CASHS athletic teams, as follows:

- The gym at the Chambersburg Area Middle School South (CAMS South) is used by the boys' and girls' basketball teams for practice in the winter. The boys' and girls' lacrosse teams practice at CAMS South gym in the spring. CAMS South is .8 miles from CASHS.
- The gym at the Chambersburg Area Career Magnet School (CMS) is used by the boys' and girls' lacrosse teams for off-season workouts. CMS is approximately three miles from CASHS.
- The District's Falling Spring Elementary School (ES) is used by the boys' and girls' cross country teams for practice and competition. Falling Spring ES is located two miles from CASHS.

- Greene Township Park is used by the boys' and girls' soccer teams for practice in the fall. The boys' baseball team also practices and competes at Greene Township Park. Greene Township Park is six miles from CASHS.
- Norlo Park in Guilford Township is used by the boys' and girls' tennis teams and the girls' softball team for practice and competition. Norlo Park is five miles from CASHS.
- The co-ed golf team practices and competes at Penn National Golf Club. The Golf Club is 8.4 miles from CASHS.
- The boys' and girls' swimming and diving teams practice and compete at Chambersburg YMCA. The Chambersburg YMCA is .2 miles from CASHS.

#### Maintenance and preparation of practice and competitive facilities

The District stated that, for the softball and baseball fields rented by the District, the Guilford Township staff and Greene Township staff, respectively, maintain the fields. OCR did not review information as to the maintenance and preparation of any other practice or competitive facilities.

### **Allegation 3 – Housing and dining facilities and services**

#### Complaint's Allegations

The Complaint alleges that football team is provided with a pre-game meal, but that no other team receives a pre-game meal.

#### District's Response

The District stated that it does not directly provide pre-game meals to any athletic team, including the football team. Rather, the District informed OCR that all meals are provided by the respective teams' booster clubs or donations. The District stated that most pre-game meals are delivered to the District and loaded on to away game transportation buses by booster club parents. The District further informed OCR that numerous local service organizations have donated pre-game meals or banquet meals to numerous District teams. In addition, on two occasions during the 2019 football season, two Varsity football coaches personally paid for pre-game meals for two away games and did not seek reimbursement from the District.

### **Allegation 4 – Travel and per diem allowance**

#### Complaint's Allegations

The Complaint alleges that there is a disparity in the manner in which the District transports the softball and baseball teams to practices and competition. Specifically, the Complaint alleges that the District transports the softball team on a bus which is so overcrowded that players sit on the bus floor and there are as many as four players to a seat. Conversely, the Complaint alleges that the baseball team buses are not as crowded.



### District's Response

The District informed OCR that the baseball and softball teams use the same methods of transportation to their practices and competitions. For practices, the players are transported the 5-6 miles to their off-campus fields by a District shuttle bus or a student's personal vehicle. For home competitions, the Varsity baseball and Varsity softball players use a student's personal vehicle, and Junior Varsity players ride a District bus.

Baseball and softball players are transported to away competitions by a District bus or a charter bus. The cost of the charter bus is typically shared equally by the District and the baseball and softball teams' booster clubs. Varsity softball travels with Junior Varsity baseball for away games, and Varsity baseball travels with Junior Varsity softball for away games.

### Modes of Transportation

Regarding modes of transportation for CASHS sports other than baseball and softball, the District informed OCR that, depending on the size of the team and the length of travel, a District van, District bus, contracted school bus, or charter bus is scheduled. Transportation to all away contests is scheduled by either the District's Director of Athletics or Assistant Director of Athletics using the appropriate form required by the District's Transportation Department. If a charter bus is used, the cost is shared equally by the District and the teams' respective booster clubs. Charter buses typically are scheduled for trips over one and a half hours away.

The District provided OCR with a list of the modes of transportation used by each CASHS athletic team. OCR noted that, in cases where there are equivalent girls' and boys' athletic teams, the teams used the same modes of transportation. For example, both the boys' and girls' varsity volleyball teams used either a school bus or charter bus to travel to away competitions.

### Other travel and per diem allowance considerations

Regarding housing arrangements during travel, the District provided OCR with excerpts from its Athletic Handbook, stating that overnight accommodations may be provided by either hotel/motel rooms or "home stays" in which host families from other schools invite CASHS students to stay with them. Arrangements for hotel/motel stays are made by the District Athletic Department, as well as arrangements for lodging and transportation for post-season tournament expenses and travel.

The District stated that it does not provide per diem allowances to any athletic teams for home or away contests.

## **Allegation 5 – Baseball and Softball Concession Stand Revenue**

### Complaint's Allegations

The Complaint alleges that the District permits the boys' baseball team to operate and retain the money earned by its booster club during the operation of the concession stand at baseball games.

Conversely, the Complaint alleges that the concession stand at girls' softball games is operated by local businesses who retain the money earned.

### District's Response

In 2013, the District entered into a lease agreement for the girls' softball team to use the facilities at Guilford Township in Norlo Park. According to the District, prior to the agreement between the District and Guilford Township, the Township had already entered into an agreement with a third-party vendor to operate the concession stands at Norlo Park. As such, the girls' softball booster club is not permitted to use the concession stand. The District informed OCR that it hopes to renegotiate its agreement with the Township for the use of the concession stand when the lease is up for renewal in February 2024.

In 2008, the District entered into a lease agreement for the boys' baseball team to use the facilities at Greene Township Park. The agreement provides for "[f]ull use of the adjacent concession stand." The District informed OCR that the baseball booster club operates the concession stand at Greene Township Park during baseball games.

### **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. The provisions of the Resolution Agreement must be aligned with the complaint allegations 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. This complaint is appropriate for a Voluntary Resolution Agreement under OCR's procedures because additional investigation would need to be conducted in order to make a compliance determination, including obtaining further information from the District to determine whether the District provides equal opportunities for athletics to members of both sexes with regard to each of the identified program components under Title IX.

On June 23, 2020, the District signed a Voluntary Resolution Agreement (Agreement) with OCR in order to resolve the matter. When fully implemented, the Agreement will address all of the allegations investigated. Accordingly, OCR is concluding its investigation of this complaint. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Title IX or its implementing regulations that may exist and are not discussed herein. The Complainant may have the right to file a private lawsuit 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 Complainant may file another 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, 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.

Thank you for your cooperation in this matter. Additionally, we would also like to take this opportunity to thank Chris Conrad for his assistance with regard to this matter. If you have any questions, please contact Sarah Haake at 215-656-6416 or sarah.haake@ed.gov or me at (215) 656-8522 or by email at vicki.piel@ed.gov.

Sincerely,

/s/

Vicki Piel  
Team Leader/Supervisory Attorney  
Philadelphia Office

Enclosure

cc: Chris Conrad, Counsel for District (via email only)