



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
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March 17, 2021

IN RESPONSE, PLEASE REFER TO 03201278

Lisa D. Beck, Ed.D.
Boone County Schools
Interim Superintendent of Schools
69 Ave B
Madison, WV 25130
By Email Only: ldbeck@k12.wv.us

Dear Superintendent Beck:

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 Boone County Schools (the District). The complaint alleges that the District discriminates on the basis of sex in its interscholastic sports at Van Junior/Senior High School (the School) in its provision of locker rooms, practice, and competitive facilities.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and District, including interviews with District personnel. Prior to the completion of OCR's investigation, on February 17, 2021, the District requested to resolve the complaint. On February 26, 2021, the Complainant withdrew a previous allegation regarding the facilities at Scott High School.

Dismissal of Allegation Concerning School 2

Pursuant to OCR's case processing procedures, we may dismiss an allegation when a complainant withdraws the allegation. The Complainant notified OCR by email and phone on February 26, 2021 that she wished to withdraw the allegation concerning School 2. OCR determined dismissal of that allegation is appropriate and is dismissing this allegation as of the date of this letter.

Factual Findings to Date

According to OCR’s investigation to date, the School offers the following varsity sports at the high school level: in the fall, boys football and girls volleyball; in the winter, boys basketball and girls basketball, and in the spring, boys baseball and girls softball.¹

Competitive and Practice Facilities at the School

The boys and girls teams use the following main facilities for competition and practice:

Facility	Teams Using	Location
Gymnasium	Volleyball (fall) Boys Basketball (winter) Girls Basketball (winter)	On-campus
Herschel Jarrell Field	Football (fall) Baseball (spring, fieldhouse only)	On-campus
Steven K. Bradley Field	Baseball (spring)	Off-campus
Softball Field	Softball (spring)	Off-campus

Boys Football: According to the District, the boys football team uses the Herschel Jarrell Field during the season. The football complex consists of the field area, a separate field house, a concrete walkway/track to the side of the field, and a weight room, which the District asserts is open to all teams. That field is located on District property at the bottom of the drive that leads up the hill to the School. The District asserts the field is up to regulation for football and was constructed sometime prior to 1975. The field has fencing, concessions, lights, a public address system, a press box, an electronic scoreboard, and bleachers. There is also an indoor “green room” about forty yards long which is use for staging for officials on game days and can be used for drills or conditioning on practice days.

Girls Volleyball: The girls volleyball team uses the gymnasium, which is part of the main building for the School. The District asserts the gymnasium is up to regulation for girls volleyball and was constructed in 1991. The most recent improvement was painting over the Summer 2020. As the gymnasium is also used for physical education programming throughout the school year, it is a non-exclusive space. Outside of school

¹ The District also reported girls cheerleading as a sport at the School. OCR interprets whether an activity qualifies as an athletic activity under Title IX consistent with standards set out in the September 17, 2008 Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance. Because OCR has not completed its investigation, OCR has not reached a conclusion for the purpose of this complaint as to whether cheerleading at the School qualifies as a sport for the purposes of Title IX.

hours, girls volleyball has priority access to the gym during the season, although cheerleading also uses the gym on occasion. The gymnasium has concessions, lights, a public address system, an electronic scoreboard, and bleachers. The team equipment is stored in an area outside the girls locker room and abutting the gym. Only coaches access that storage area.

Boys Baseball: The boys baseball team uses the Steven K. Bradley field for competitions and practices. The field is located about 10 miles from the School. The District asserts the field is up to regulation for boys baseball and was built in the 1950s, then renovated for high school use in about 1978. According to documents provided by the District, there is also a clubhouse that was built in 2002. The boys baseball team has exclusive use of the field during the season. No other teams use the “green room” during baseball season. The field has fencing, concessions, lights, home/visiting dugouts, portable bleachers, an electronic scoreboard, and a press box. There are also batting cages and a public address system, but the District provided information to suggest those may not be functional. Based on OCR’s investigation to date, the baseball team also practices in the indoor “green room” at the football fieldhouse, which has a functional batting cage and may have a pitching machine that can be moved around and used outdoors. According to District employees, team equipment is stored at the fieldhouse and/or dugout at Steven K. Bradley field.

Girls Softball: Prior to the 2019-2020 season, the girls softball team played on a field which, according to District staff, was not up to regulation to host post-season games because it has grass in the infield. The playing surface of the new field, which is adjacent to Steven K. Bradley field, was ready for play during the 2019-2020 season but the season was cancelled because of COVID-19. The District asserts the field is up to regulation for girls softball and the playing surface was completed last year. The field has a home dugout and fencing, but the visitors’ dugout still needs to have its roof installed. The District reports that an electronic scoreboard has been purchased but not yet installed; a public address system and portable bleachers have also been purchased and are currently in storage. While more than one District employee stated there were discussions about the boys baseball team sharing the larger recently donated portable bleachers with the girls softball team, OCR’s investigation to date has not found evidence of a firm agreement to share said bleachers. There is also no press box or concession stand at the softball field. The District reports it has also purchased new lights for the softball field and paid for the installation, although their installation was not yet confirmed. At the field, there is no storage for team equipment, just a small area at the end of the dugout for field-maintenance equipment. According to a District employee, the boys baseball coach has previously let girls softball store team equipment in the boys baseball storage areas. In inclement weather, the girls softball team can practice in the gymnasium at the high school and the “mini-gym” above that gymnasium, although the team may not have exclusive access to those indoor locations. When interviewed, a District employee stated the “mini-gym” is smaller than the “green room” at the football fieldhouse. There are no batting cages at the girls field, but the “mini-gym” has a batting cage that the girls softball team uses.

Locker Rooms

Football Locker Room: Boys football has its own exclusive locker room at the football complex adjacent to the field house and weight room. There is also a visiting locker room. Individual players are assigned non-enclosed locker/cubby areas, and they can store equipment and uniforms there overnight. Players do not have access during the school day or before school, however.

Gymnasium Locker Rooms: Girls volleyball, boys basketball, and girls basketball use the main gymnasium locker rooms. The physical education program uses those locker rooms during the day, so all use is non-exclusive. The girls locker room is in better condition than the boys locker room, as many of the lockers in the boys locker room have been damaged or destroyed. During competitions, the home team will use one locker room, and the visiting team will use the other locker room. There was conflicting information about whether the boys basketball team would use the boys locker room or the girls locker room during competitions. Players do not have access to these locker rooms before or during the school day and cannot store their equipment or uniforms there overnight.

Baseball Locker Rooms. Boys baseball has its own exclusive locker room at the baseball clubhouse by Steven K. Bradley field. The locker room is locked overnight, and players can store equipment there, although they do not have access to it before or during the school day. Team equipment is also stored in the clubhouse. Currently, some of the storage areas are occupied by construction materials due to the ongoing work at the girls softball field.

Legal Standard

The Title IX regulation, at 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, intercollegiate, club, or intramural athletics offered by a district. The Title IX regulation, at 34 C.F.R. § 106.41(c), states that a district which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes.

In determining whether a district is in compliance with Title IX with respect to athletics, OCR follows “A Policy Interpretation: Title IX and Intercollegiate Athletics” (the Policy Interpretation), which was published at 44 Federal Register No. 239, December 11, 1979; the “Title IX Athletics Investigator’s Manual” (1990) (the Manual) (available at <http://eric.ed.gov/?id=ED400763>), and other applicable policy documents.

The provision of lockers, practice, and competitive facilities is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(7). OCR interprets that regulation in conformity with its intercollegiate athletics policy interpretation, Federal Register, Vol. 44, No. 239, published December 11, 1979. Under that interpretation, OCR assesses six factors in determining compliance with this component: (a) quality and availability of the facilities provided for practice and competitive intercollegiate events; (b) exclusivity of use of facilities provided for practice and competitive events; (c) availability of locker rooms; (d) quality of

locker rooms; (e) maintenance of practice and competitive facilities; and, (f) preparation of facilities for practice and competitive events.

The Policy Interpretation clarifies that district must provide equivalent treatment, services, and benefits regarding athletic program components. The overall equivalence standard allows district to achieve their own program goals within the framework of providing equal athletic opportunities. To determine equivalency for men's and women's athletic programs, program components assessed by comparing the following: availability, quality, kind of benefits, kind of opportunities, and kind of treatment.

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the district may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Compliance concerns will exist only if disparities are of a substantial and unjustified nature in a school's overall athletic program; or if disparities in individual program areas are substantial enough in and of themselves to deny equality of athletic opportunity.

Conclusion

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 voluntary resolution agreement. The provisions of the agreement must be aligned with the complaint allegations and the issues investigated and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the District requested to resolve the remaining issues in this complaint through a voluntary resolution agreement, which was executed on March 16, 2021. When fully implemented, the resolution agreement will address all of the remaining allegations investigated. Consequently, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact OCR attorney Catherine Deneke, at 215-656-5964 or Catherine.Deneke@ed.gov; or OCR attorney Bradley Moore, at 215-656-8502 or Bradley.Moore@ed.gov.

Sincerely,

/s/

Christina M. Haviland
Supervisory Attorney

Enclosure