



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
PENNSYLVANIA
WEST VIRGINIA

September 23, 2022

IN RESPONSE, PLEASE REFER TO: 03221205

VIA E-MAIL ONLY: Jesse.Bacon@Bullitt.Kyschools.us

Dr. Jesse Bacon
Bullitt County Public Schools
Superintendent
1040 Highway 44 East
Shepherdsville, KY 40165

Dear Superintendent Bacon:

This is to advise you of the resolution of this complaint that was filed with the U.S. Department of Education's Office for Civil Rights (OCR) against Bullitt County Public Schools (the District). The Complainant alleges that the District discriminated on the basis of sex as follows:

1. at the end of the 2021-22 season, the Bernheim Middle School (the School) failed to hold an awards banquet for the girls' basketball team; however, it held an awards banquet for the boys' basketball team;
2. in spring 2022, the District renovated the School gymnasium and put up a large picture of the boys' basketball team, but it did not put up a picture of the girls' basketball team. Consistent with OCR's procedures, our investigation considered whether the District provides equal opportunities with regard to publicity services for male and female athletes in its interscholastic athletic program at the School; and
3. during the 2021-22 season, the School's girls' basketball team did not practice as frequently as the boys' basketball team. Consistent with OCR's procedures, our investigation considered whether the District provides equal opportunities with regard to the scheduling of games and practice times for male and female athletes in its interscholastic athletic program at the School.

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.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint, pursuant to Section 302 of OCR's Case Processing Manual (CPM), by taking the steps set out in the enclosed Voluntary Resolution Agreement, which when fully implemented

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

will resolve this complaint. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Voluntary Resolution Agreement.

Legal Standards

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance. The Title IX regulation, at 34 C.F.R. § 106.41 prohibits discrimination in athletics. Section 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, interscholastic, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis. Section 106.41(c), requires a recipient to provide equal athletic opportunity for members of both sexes, including at Section 106.41(c)(3), in the provision of scheduling of games and practice time and at Section 106.41(c)(10), in the provision of publicity.

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 publicity: availability and quality of sports information personnel; access to other publicity resources for men's and women's programs; and quantity and quality of publications and other promotional devices featuring men's and women's programs; and
- provision of scheduling of games and practice time: 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; and opportunities to engage in available pre-season and post-season competition.

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 men’s and the women’s teams, e.g., if a men’s team received a superior benefit in some way, OCR considers whether the benefit provided to the men’s program was offset by an unmatched benefit to any of the teams in the women’s program. In making this “program-wide” comparison, and before OCR concludes that a benefit to one of the teams in the women’s program offsets a benefit provided to one of the teams in the men’s program, OCR considers whether the offsetting benefits were equivalent or equal in effect. OCR only finds the benefit offsetting if it had the same or a similar effect on the student-athlete(s) or team within the same program component.

If OCR identifies disparities, and if it finds no evidence of offsetting, we consider whether the differences between the benefits provided to the men’s and women’s 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 men and women.

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.

Factual Background

The School enrolls students in sixth, seventh, and eighth grade. According to the School’s website, it offers the following sports: baseball, girls’ and boys’ basketball, cheerleading,¹ cross country, track and field, volleyball, and archery. The School’s girls’ basketball team competes during the fall season, and the School’s boys’ basketball team competes during the winter season. The District’s girls’ and boys’ high school basketball teams compete in the winter.

Allegation 1 – Awards Banquets for the Basketball Teams

The Complainant alleges that the School’s girls’ basketball team did not have an end of season awards banquet for the 2021-22 school year, but the School’s boys’ basketball team did have an awards banquet. The Complainant reported to OCR that the girls’ booster club and parents of the girls asked multiple times for a banquet and the District did not have one.

The District stated that it did not hold a banquet because, among other reasons, multiple students on the School’s girls’ basketball team immediately transitioned to the high school basketball team when the fall season ended, and high school practices and games prohibited any available dates and times for an awards banquet.

The District also stated that holding a banquet is typically within the discretion of the coach; however, here, the decision not to hold a banquet for the girls’ basketball team during the 2021-22 school year was a collaborative, representative decision among parents, coaches, and booster organization members. The XXXXXXXXXXXXXXXXXXXX informed OCR that several months later, they tried to schedule the banquet again and could not find a date that would work with the School’s testing schedule and the booster club. At that point, the booster club decided to send gifts to School for the players. The District provided a document entitled “Annual

¹ This letter does not address whether OCR would consider cheerleading to be a “sport” for Title IX purposes.

implemented, will address the evidence obtained and all of the allegations investigated in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation and are consistent with applicable law and regulation. 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Sarah Haake at sarah.haake@ed.gov; 215-656-6416.

Sincerely,

/s/

Catherine C. Deneke
Supervisory Attorney
Philadelphia Office

Enclosure

cc: Eric Farris, Counsel for District (via email only to: Eric.Farris@DINSMORE.COM)