



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

August 7, 2017

Dr. Danielle Owens
Superintendent
Pekin Community High School District #303
1903 Court Street
Pekin, IL 61554

Re: OCR Case No. 05-15-1291

Dear Dr. Owens:

This is to notify you that the U.S. Department of Education, Office for Civil Rights (OCR), has completed its complaint resolution activities with regard to the above-referenced complaint filed against the Pekin Community High School District #303 (District) alleging discrimination on the basis of sex and also alleging retaliation.

Specifically, the complaint alleged the following:

1. the District is subjecting female students at its high school to discrimination based on sex by failing to effectively accommodate the students' interests and abilities in its interscholastic athletics program;
2. the District is subjecting female athletes in the District's high school interscholastic athletics program to discrimination on the basis of sex by failing to provide girls interscholastic athletics opportunities equal to boys with respect to the provision of equipment and supplies, provision of travel and per diem allowance, availability of coaching, provision of locker rooms and practice and competitive facilities, provision of medical and training facilities and services, provision of publicity, and provision of support services;
3. the District is subjecting female high school students to discrimination on the basis of sex by not providing them an equal opportunity as provided to male students to receive scholarships given by the high school's booster clubs; and
4. during the 2014-2015 school year, the District subjected an employee (Employee A) to retaliation for her internal grievance filed in summer 2014, in that the District eliminated the freshman softball team and a softball coaching position, the District denied the softball team the opportunity to play a game at a nearby university, the District applied dress code rules differently to Employee A than to other teachers, the District overcharged the softball booster club for cookies and then upon reversing the overcharge said it would not provide cookies for future events run by the softball booster club, and the District failed to take action to address an e-mail message sent by a District employee containing a derogatory reference to Employee A.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex and retaliation in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX.

During OCR's investigation, OCR reviewed data provided by the Complainant and the District, interviewed Employee A, District personnel, and District students, and reviewed District facilities and equipment and supplies. Based on the investigation, OCR determined that the evidence is insufficient to establish a violation of the applicable regulations with regard to allegations #1 and #4 and portions of allegation #2 but established a violation of Title IX with regard to portions of allegation #2. Prior to the completion of OCR's investigation, the District agreed to resolve allegation #3. The bases for OCR's conclusions are set forth below.

Background

From 2014-2015 through 2016-2017, Pekin Community High School (School) had an enrollment of about 2000 students and offered interscholastic athletic opportunities to boys in baseball, basketball, cross-country, football, golf, soccer, swimming, tennis, track and field, and wrestling. During the same period, the District offered interscholastic athletic opportunities to girls in basketball, cross-country, golf, soccer, softball, swimming, tennis, track and field, and volleyball. The School is a member of the Illinois High School Association (IHSA).

During this period, the District had separate booster clubs for each sport; there was no club for boys' and girls' tennis, boys' and girls' track, or volleyball in 2014-2015. The Complainant indicated that the football booster club, the Quarterback Club, raises more money and provides more benefits to athletes than do other booster clubs; a sign above the concession stand at the football stadium listed several items the Quarterback Club has provided.

The District required that each booster club obtain the Superintendent's approval before initiating a fundraising activity and also required each club to submit an annual report of expenses. The District provided statements from each club, which indicated that the clubs used their funds to provide food for road trips, charter buses, equipment, spirit wear, senior nights, scholarships for college, and summer camps and off-season competitions. The statement from the Quarterback Club also indicated that it helped to pay for improvements to the football locker room.

The District informed OCR in January 2017 that it was in the process of consolidating its sport-specific booster clubs into a single booster club for all sports for the 2017-2018 school year.

Allegation #1

Legal Standards

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states, 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 ... athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.” The provision of equal opportunities with respect to the opportunity to participate in interscholastic athletics is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1).

To assess whether a recipient is providing equal athletic opportunities to members of both sexes, OCR uses the Department’s “Intercollegiate Athletics Policy Interpretation,” issued December 11, 1979, and found at 44 Fed. Reg. 71,413 *et seq.* (Policy Interpretation), which is generally applicable to interscholastic athletics.

In assessing whether the interests and abilities of the members of both sexes are being effectively accommodated to the extent necessary to provide equal opportunity to participate in interscholastic athletics, OCR uses the three-part test established in the Policy Interpretation. Each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. An institution is in compliance if it has met any one of the following three parts of the test: (1) the athletic participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or (2) there is a showing by the institution of a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex; or (3) it is demonstrated that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the present program.

Facts

Part One

Of the 1,926 students who were enrolled at the District’s high school in 2016-2017, 994, or 51.6%, of these students are male and 932, or 48.4%, of these students are female. Female athletes were 278, or 36.3%, of the 765 participants in interscholastic athletics in 2016-2017, a proportion lower than in previous years. The 12.1 percentage point disparity between the proportion of students who are female and the proportion of athletes who are female represents as many as 178 participation opportunities for girls.

Part Two

Under part two of the test, OCR considers evidence such as the school’s record of adding or upgrading teams to interscholastic status, increasing the numbers of interscholastic athletic participants, and responding affirmatively to requests by students or others for addition or elevation of sports. OCR also considers evidence of a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex by examining the school’s current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports and the effective communication of the policy or procedure to students. OCR further considers the school’s current implementation of a plan of program expansion that is responsive to students’ developing interests and abilities.

The District began its girls' athletic program in 1973-1974 with basketball, softball, tennis, and volleyball. The District added girls' swimming and track and field in 1977-1978, cross-country in 1981-1982, soccer in 1996-1997, and golf in 2001-2002. The District indicated that it offers a bass fishing club and intramural basketball. The District reported that it has never eliminated a girls' sport.

The District offers all of the sports sanctioned by the IHSA for girls except badminton, bowling, gymnastics, and water polo. The high school is a member of the Mid-Illini Conference; according to the IHSA's and high schools' web sites, no schools in the conference offer badminton, bowling, gymnastics, or water polo.

The District reported that it has not completed any gender equity studies and provided no information to indicate there have been any requests for the addition of girls' sports or additional levels or teams for existing sports. The District also reported that it has not conducted an interest survey since 2009.

The District provided a copy of its policy for the addition of extracurricular clubs, but the policy does not address how to request additional interscholastic athletic opportunities or how the District will assess or respond to such requests. The District has not publicized a method by which students can request new sports or levels. The District also does not have a plan in place for program expansion.

Part Three

Under part three, OCR considers whether there is (a) unmet interest in a particular sport; (b) sufficient ability to sustain a team in the sport; and (c) a reasonable expectation of competition for the team in the school's normal competitive region. If all three conditions are present, then OCR will find that the school has not fully and effectively accommodated the interests and abilities of the underrepresented sex.

The Complainant, who was the School's head softball coach through the 2015-2016 school year, said the freshman softball team was combined with the sophomore team to create a freshman-sophomore team in 2015. She said they did not cut anyone but had 21 girls on the team while the boys had two separate teams in baseball for those grade levels. No other athletes or coaches indicated that additional levels are needed to accommodate the number of athletes they have in their sport, but no information provided to OCR indicated that the District has a policy for determining when to add or eliminate a level. Baseball and softball both had three levels within the sport but according to the Complainant, over her objection, the freshman softball team was combined with the sophomore team in 2015 to create a freshman-sophomore team. The Superintendent confirmed that there were not separate freshman and sophomore teams in 2015, and said that during the previous two years, at the Complainant's request to have only two squad levels, there was no separate freshman team offered. Data from the District indicated that there 20 athletes on the Freshman-Sophomore squad, and the softball athletes did not indicate that an extra level was needed in their sport. The District informed OCR in January 2017 that it had

reinstated the third level of softball and provided a squad list documenting this to OCR in March 2017.

In fall 2016, OCR interviewed coaches from each team¹ and a group of students from each team, totaling approximately 130 students. The individuals interviewed by OCR identified only two sports not currently offered in which they believe girls would be interested in participating: badminton and lacrosse. No one was aware of any requests made to the District for the addition of sports.

OCR noted that Peoria has community lacrosse teams for students in grades 4-8 through the park district; in addition, the website for Central Illinois lacrosse lists several teams near Pekin, including in Morton, Washington, and Peoria.² In March 2017, the District's Athletic Director (AD) indicated that there are two lacrosse clubs in the area, one in Dunlop and one in Morton. He stated that it is possible that the schools will take control of the clubs in 2017-2018, the year in which the IHSA will first offer a state championship in lacrosse. He said that he knows that the Dunlop club is in a Chicago-area conference and competes against clubs in that area, not within the District's normal competitive region. OCR also located via Internet searches information about a girls' lacrosse club in Bloomington-Normal and one in Washington. Among the schools in the District's conference or in nearby communities, only Peoria Notre Dame High School indicated on its website that it offered girls' lacrosse; the schedule on the website identified competitions against the Bloomington, Morton, and Washington clubs.

The IHSA web site contains sectional assignments for girls' badminton³; this listing indicates that the only schools that offer badminton for girls are in the metropolitan Chicago area, outside of the District's normal competitive region.

Analysis and Conclusion

Female athletes were 36.3% of the participants in interscholastic athletics in 2016-2017. The disparity between the proportion of students who are female and the proportion of athletes who are female represents as many as 178 participation opportunities for girls, a number too large to be explained by natural fluctuations in enrollment and a number sufficient to sustain a viable team. Therefore, the athletic participation opportunities for male and female students are not provided in numbers substantially proportionate to their respective enrollments.

Because no sports have been added since 2001-2002, there is no policy in place by which students can request the addition of sports, and there is no plan for or recent practice of program expansion, the District has not demonstrated that it has a history or continuing practice of program expansion for female students.

The District has not conducted a recent and meaningful assessment of the athletic interests of its girls. Testimony provided by athletes and coaches identified only two sports in which female

¹ OCR interviewed 16 coaches, as some coached more than one sport.

² <http://www.cilax.net/teams.html>

³ <https://www.ihsa.org/SportsActivities/GirlsBadminton/StateSeriesInformationResults.aspx?url=/data/bad/1assign.htm>

students may be interested, but there have been no requests for the addition of either sport. One of these sports, lacrosse, is being sanctioned by the IHSA as a sport beginning in the 2017-2018 school year. The District provided information to OCR to indicate that there is not available competition in its normal competitive region in lacrosse, and OCR's independent research identified only one high school in the District's normal competitive region offering girls' lacrosse as an interscholastic sport, as well as a few private lacrosse clubs. The evidence also indicated that there is not competition in girls' badminton within the District's normal competitive region.

Based on the above, OCR determined that the preponderance of the evidence does not indicate that there is interest, ability, and available competition in any sports not currently offered by the District. Therefore, the evidence is insufficient to establish that the District has failed to effectively accommodate the athletic interest and abilities of female students.

Allegation #2

Legal Standards

In addition to the selection of sports, a recipient must provide males and females equivalent treatment in the provision of other benefits and opportunities, that is, in component areas of what is sometimes called the "laundry list." The Title IX implementing regulation requires a recipient to provide equal athletic opportunity for members of both sexes in the laundry list components applicable here, as follows: at 34 C.F.R. §106.41(c)(2), in the provision of equipment and supplies, at 34 C.F.R. §106.41(c)(4), in the provision of travel and per diem, at 34 C.F.R. §106.41(c)(5) and (6), in the availability, assignment and compensation of coaches, at 34 C.F.R. §106.41(c)(7), in the provision of locker rooms and 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)(10), in the provision of publicity. The Policy Interpretation also identifies the provision of support services as a program component that may be assessed by OCR in determining whether a recipient is providing equal athletic opportunity to males and females.

In considering each of the applicable component areas in the School's interscholastic athletics program, OCR conducted an overall review of the boys' and girls' teams at the School. When disparities were identified between the girls' and the boys' teams, OCR considered whether the benefit provided to the program was offset by an unmatched benefit to any of the teams in the program for students of the other sex. In making this "program-wide" comparison, and before OCR concluded that a benefit to one of the teams in the girls' program offset a benefit provided to one of the teams in the boys' program, OCR considered whether the offsetting benefits were equivalent or equal in effect.

Once OCR identified disparities and found no evidence of offsetting, we considered whether the differences between the benefits provided to the boys' and girls' programs were negligible. Where the disparities were not negligible, OCR examined whether they were the result of legitimate, nondiscriminatory factors. If OCR found no legitimate, nondiscriminatory reasons for the disparities, OCR then determined 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.

School districts have 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 or private funds provide for benefits or services that assist only teams of one sex, the school district must ensure that teams of the other sex receive equivalent benefits and services. If booster clubs or private funds 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.

Facts

Provision of Equipment and Supplies

Under the Policy Interpretation, “equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight training equipment.” The Policy Interpretation lists five factors in determining whether a recipient provides equal opportunities in the provision of equipment and supplies: (1) quality; (2) amount; (3) suitability; (4) maintenance and replacement; and (5) availability of equipment and supplies.

Coaches and athletes in all sports generally indicated that athletes must provide their own shoes; they also indicated that the School provides all necessary equipment, except that athletes must provide personal equipment, such as baseball and softball gloves, golf clubs, shin guards, swimsuits, and tennis rackets, and a few male and female athletes are required to pay money toward uniforms.

Testimony of athletes and/or coaches identified problems with the quality of boys’ and girls’ swimming equipment, girls’ basketball practice jerseys, baseball pitching machines, mats and hurdles used for boys’ and girls’ track, golf bags and raingear for the girls’ golf team, bags and nets for the volleyball team, bags for the softball team, catcher’s equipment for the softball team, practice uniforms for the softball team, and singlets for the wrestling team. OCR’s on-site review in 2015 confirmed the testimony regarding the quality of boys’ and girls’ swimming equipment, but did not confirm the problems identified in girls’ basketball, volleyball, and wrestling. In a follow-up on-site review in March 2017, OCR observed that the problems with the swimming equipment had been corrected, the golf bags for boys and girls were in good to excellent condition, the rain gear provided to the girls’ golf team appeared in good condition and varied in sizes, and the softball bags appeared to be in good condition. In addition, in March 2017, the baseball coach said he had purchased two pitching machines for the 2017 season, the girls’ track coach said the hurdles are in good to excellent condition but they are a few hurdles short, and the baseball and softball coaches both stated that they have catchers’ equipment available and in good condition, but that catchers in both sports prefer to provide their own. The

District also reported in January 2017 that no sports are provided specific practice uniforms and that the previous softball coach chose to use old uniforms instead of having athletes provide their own practice clothes, as athletes in all other sports were required to do.

The athletes and coaches indicated that the amount of equipment provided is sufficient to meet the needs of their teams, except that the softball athletes said there are not enough bags, practice uniforms, or pullovers to wear during cold weather. As noted above, the District indicated that it does not provide practice uniforms. The current softball coach indicated in an interview in March 2017 that the District has recently purchased more than enough pullovers and bags for all the players on the team.

The coaches and athletes generally indicated that the equipment and supplies provided are regulation and are appropriate for the sport. The softball athletes said in 2015 that the helmets provided by the School are not regulation, so they have to supply their own. The District reported in January 2017 that it had purchased new softball helmets. OCR reviewed helmets in the equipment storage area during its March 2017 on-site, and they appeared to be in good condition; the District noted that most of the helmets had been distributed already to the current softball players, although several players choose to use their own. The softball coach informed OCR in an interview in March 2017 that new regulation helmets were purchased and distributed to all players in 2017.

The District provided OCR a copy of a replacement schedule it developed starting in 2005-2006 for uniforms; under this replacement schedule, uniforms in all sports, except for boys' and girls' tennis, are replaced every four years. Coaches indicated that all other equipment and supplies are replaced as needed.

According to testimony provided in 2015, all athletes have to launder their own uniforms, with the exception of boys' basketball, wrestling, and girls' track. However, in January 2017, the District reported that wrestling is the only sports for which uniforms are laundered.

Coaches and athletes did not indicate any concerns about the maintenance of any equipment and supplies. Coaches and athletes all indicated that equipment and supplies are available whenever needed.

Travel and Per Diem

The Policy Interpretation lists five factors in determining whether a recipient provides equal opportunities to males and females in the provision of travel and per diem: (1) modes of transportation; (2) housing furnished during travel; (3) length of stay before and after competitive events; (4) per diem allowances; and (5) dining arrangements.

The District indicated that it provides a travel budget for each team, which pays for transportation and food. Testimony of coaches and athletes revealed that teams generally use either a school bus or a 15-seat "Dragon Wagon" bus to travel to road competitions. However, coaches indicated that for longer trips, the team can use a charter bus. The girls' soccer athletes said the boys' soccer team uses a charter bus for shorter trips than does the girls' soccer team.

The girls' swimming athletes said they never get a charter bus even when they travel more than three hours, while the boys' swimming team gets a charter bus.

Data provided by the District showed that in 2014-2105, four boys' teams used charter buses on a total of seven occasions and three girls' teams used a charter bus on a total of four occasions. The District reported in January 2017 that it had imposed new requirements a team must meet in order to use a charter bus, reducing the use of charter buses. Under the new policy, the District will provide the use of charter buses for any state series competition that is more than 90 miles away. Other than for these events, a booster club may only request use of a charter bus for any competitions that are more than 150 miles away; if a request is granted, the District funds the portion of the cost that would be the cost for use of a school bus for the same trip, and the booster club funds any additional cost.

In 2016-2017, the football and baseball teams each used charter buses once for regular season competitions. OCR identified one other regular season trip, a girls' volleyball game, which was far enough for use of a charter bus if the booster club had requested it, but for which a charter bus was not used. Three boys' teams and two girls' teams used charter buses to travel to state competitions; two boys' teams, one girls' team, and one co-ed team also competed in state competitions more than 90 miles away, but did not use charter buses.

Coaches and male and female athletes indicated that when teams stay overnight, all stay in comparable mid-priced lodging, with three or four athletes to a room and a separate room for the coach. No boys' or girls' teams stay overnight before or after competitions, except when they are in a multi-day event; in such instances, there is no difference based on sex.

Testimony indicated that for short trips during the week, athletes do not receive any per diem for food. Teams receive anywhere from \$5-\$8 per athlete, per meal for longer trips; the District indicated that there is no set amount for per diem, but that coaches use funds from their travel budgets for this purpose. None of the coaches indicated that the travel budget fails to meet the needs of the team. There was no indication in the information provided to OCR that any differences in the amount given to the athletes favored one sex over the other.

The football coach said the varsity team receives a pre-game meal in the afternoon before each game; data indicated that 55 football players, or 11.3% of all male athletes, were on the varsity squad in 2014-2015. In addition, the coach said that on one occasion, the football team received a meal after a game. The boys' and girls' cross-country teams have a meal on Friday nights before Saturday meets, with food paid for using the per diem allocation; these teams have 5.3% of all male athletes and 6.8% of all female athletes. Other teams indicated that they do not have pre-game meals and that teams usually stop at fast food restaurants when they travel sufficiently far to receive a per diem allocation. The District indicated in January 2017 that the booster club would address in 2017-2018 the disparity in dining arrangements for the football team when compared to all other teams.

Availability, Assignment and Compensation of Coaches

The Policy Interpretation lists three factors to be considered in determining compliance with respect to the opportunity to receive coaching: (1) relative availability of full-time coaches; (2) relative availability of part-time and assistant coaches; and (3) relative availability of graduate assistants. The Policy Interpretation lists two factors to be considered in determining compliance with respect to the assignment of coaches: (1) training, experience, and other professional qualifications; and (2) professional standing. The Policy Interpretation lists seven factors to be considered among others in determining compliance with respect to the compensation of coaches: (1) rate of compensation (per sport, per season); (2) duration of contracts; (3) conditions relating to contract renewal; (4) experience; (5) nature of coaching duties performed; (6) working conditions; and (7) other terms and conditions of employment.

In 2016-2017, the athlete to paid coach ratio was 16.3 for boys' teams and 13.1 for girls' teams; counting volunteer coaches, the athlete to coach ratio was 11.6 for boys and 9.2 for girls.

Most coaches and athletes indicated that the number of coaches provided in their sports is sufficient, with a few exceptions: athletes and/or coaches in four girls' sports said they need another coach. In addition, athletes in one girls' sport said their coaches are sometimes late to practice; this is the only concern expressed about availability of coaches.

No coaching positions are full-time positions; the majority of head coaches are also employed in the District in teaching positions. In 2016-2017, head coaches of girls' teams averaged 8.8 years of head coaching experience and head coaches of boys' teams averaged 6.8 years of head coaching experience. Head and assistant coaches of girls' teams averaged 8.4 years of coaching experience and head and assistant coaches of boys' teams averaged 6.3 years of coaching experience. Most head coaches interviewed by OCR also indicated experience playing at the high school and/or college level. Athletes did not express concerns about quality of coaching.

Salaries of coaches in each sport are set forth in the contract between the District and the teachers' union. Girls' head coaches in 2016-2017 averaged a salary of \$5827, while boys' head coaches averaged a salary of \$6107. Girls' assistant coaches averaged a salary of \$4284, while boys' assistant coaches averaged a salary of \$4520. No athlete testimony suggested that girls' sports had inferior coaches to boys' sports.

All coaches are evaluated yearly at the close of the season by the AD, and a decision is made as to whether to retain the coach for the following year. The nature of the coaching duties, the working conditions, and other terms and conditions of employment are similar for all coaches.

Provision of Locker Rooms and Practice and Competitive Facilities

The Policy Interpretation lists six factors to be assessed in determining whether a recipient provides equal opportunities to males and females in the provision of locker rooms and practice and competitive facilities: (1) the quality and availability of the facilities provided for practice and competitive events; (2) the exclusivity of use of facilities provided for practice and competitive events; (3) the availability of locker rooms; (4) the quality of locker rooms; (5) the

maintenance of practice and competitive facilities; and (6) the preparation of facilities for practice and competitive events.

The District indicated that all teams except for cross-country and tennis have concessions available at their competitions, all teams except for cross-country and golf have spectator seating available at their competitions, and the following teams have scoreboards at their facilities: baseball, boys' and girls' basketball, football, boys' and girls' soccer, softball, boys' and girls' swimming, volleyball, and wrestling. All of the teams with scoreboards now have public address systems; at the time of OCR's initial on-site in September 2015, softball did not have a public address system. The baseball, football, boys' and girls' soccer, and boys' and girls' track teams had press boxes at their facilities at the time of OCR's initial on-site in September 2015; in addition, there is now a press box at the newly-constructed softball field.

Coaches and athletes generally indicated that the facilities were in good condition, with a few exceptions. Athletes in four sports identified concerns with the facilities used for by both boys' and girls' teams. Also, girls' soccer athletes said the restrooms are closed, there are no water fountains available, and they have to hop the fence to reach the practice field. The girls' soccer coach said that the restrooms are locked only for the first week or two of the season because the park district has not turned on the water yet. He said that there were a few occasions when the coaches did not have a key to the lock, but that situation was rectified when he received the key. In March 2017, the AD informed OCR that the outbuilding will be turned into locker rooms for the 2017-2018 school year, and the locker rooms will have plumbing facilities. Softball athletes said in 2015 that the indoor batting cage used by the softball team had holes in it; in March 2017, the softball coach said the batting cage currently in place does not have any holes. In 2015, softball athletes identified a lack of amenities at the existing off-campus field. However, during OCR's on-site in March 2017, OCR observed that the on-campus softball field has been constructed and that the field contains all of the amenities as are provided at the baseball field. OCR also observed during its March 2017 on-site that the softball team has a practice field, in addition to the field used for games; the baseball team does not have a separate practice field.

Most teams have exclusive use of their on-campus facilities during their season, except that the basketball teams share the gym using a rotating schedule, the girls' and boys' track teams practice together, and the football team shares use of the stadium with the pom pon and cheerleading squads and also is unable to use the stadium one day each week when the band is using it for practice. In addition, during inclement weather, multiple teams may use the gyms for practice. The District provided a copy of a practice schedule showing that the schedule for facilities that conflicted did not favor boys or girls.

With regard to off-campus facilities, the boys' and girls' golf teams use courses available to the public but have tee times reserved for practice each day.

The varsity football team and the boys' track team used a locker room at the stadium that is newly remodeled; testimony and OCR's observation revealed that this locker room is in excellent condition. The non-varsity football teams and the girls' track team were assigned to the other locker room at the stadium, which OCR's observation revealed is in poor condition. The girls' track athletes said they were not aware that this locker room was assigned to them, and said

it is “gross” and not used by anyone. In March 2017, the AD informed OCR that the District now rotates on an annual basis the varsity football locker room, with the girls’ track team using this locker room in spring 2017; in a subsequent interview, the girls’ track coach confirmed this.

The boys’ and girls’ swimming teams use the locker rooms adjacent to the pool. The boys’ locker room is recently remodeled. Testimony and OCR’s observation revealed that the lockers in the boys’ locker room are in good condition while the lockers in the girls’ locker room are in poor condition. Female athletes said the girls’ lockers are rusty and wearing out, do not open and shut, and have garbage and bugs in them, while the bathroom stalls in the locker rooms do not shut or lock and the toilets do not flush; they also said there are roaches, mildew, and mold in the locker room. During the March 2017 on-site, the District informed OCR that it planned to renovate the girls’ swimming locker room in summer 2017.

The varsity and sophomore boys’ basketball teams used a locker room in 2014-2015 adjacent to the gym, while freshmen used the swimming and PE lockers. At the time, the girls’ varsity locker room in the gym area was used by the volleyball team in the fall, the basketball team in the winter, and the softball team in the spring. Athletes on these teams noted in fall 2015 that there were only enough lockers for the varsity athletes, so other athletes put their bags on the floor, which hindered the varsity athletes’ access to their lockers. Athletes said the locker room had roaches, the toilet stall lacked doors, and the showers were poor quality and lacked shower curtains. However, during the March 2017 on-site, OCR observed the newly renovated boys’ and girls’ locker rooms adjacent to the gym. The locker rooms are mirror images of one another, with the same number and size lockers, shower stalls, toilet stalls, and sinks.

The baseball coach said athletes change in their cars or in the dugouts, although he said they could use the varsity boys’ track locker room if they needed a private place to change. The girls’ soccer players said they change in their cars, while boys have the opportunity to change in the restrooms at the field during their season. However, the boys’ and girls’ soccer coaches both said athletes either change in their cars or at the School prior to going to practice; they can also change at the restrooms at the field.

Coaches and athletes generally indicated that there are no problems with the maintenance and preparation of the facilities.

Medical and Training Facilities and Services

The Policy Interpretation lists five factors to be assessed in determining whether a recipient provides equal opportunities in the provision of medical and training facilities and services: (1) availability of medical personnel and assistance; (2) health, accident and injury insurance coverage; (3) availability and quality of weight and training facilities; (4) availability and quality of conditioning facilities; and (5) availability and qualifications of athletic trainers.

The District provides all teams with access to a board certified athletic trainer during practice two days per week, Tuesdays and Thursdays. The trainer is stationed at a field or in the gym and is available to athletes from any sport.

The trainer also attends home competitions in boys' and girls' basketball, football, boys' and girls' soccer, volleyball, and wrestling and away competitions in football. The District also indicated that a medical doctor attends home and away football games.

All athletes are required to obtain a physical examination annually; the School arranges physicals for athletes in any sport, or athletes' families can obtain physicals on their own. The District makes available to all athletes the option to purchase insurance coverage through a specific company.

There is one weight and conditioning room available at the School for all athletes. It contains weight and exercise equipment, including stationary bicycles, treadmills, and ellipticals. Athletes indicated that they can use this room at any time, as there is no schedule reserving the room for use by particular teams. Male and female athletes from all teams said the equipment available in this room meets the needs of their team.

Publicity

The Policy Interpretation lists three factors to be assessed in determining whether a recipient provides equal opportunities in the provision of publicity: (1) availability and quality of sports information personnel; (2) access to other publicity resources for boys' and girls' programs; and (3) quantity and quality of publications and other promotional devices featuring boys' and girls' programs.

There are no personnel specifically assigned to sports information responsibilities. Each coach can report results and communicate with local newspapers.

The District indicated, and OCR confirmed during the on-site, that the picture of each current team is hung on the wall at the School. In addition, the School has several trophy cases with trophies and awards won by boys' and girls' teams during the history of the School.

As of fall 2015, the District annually held pre-season "Red and White Scrimmage" events to publicize three boys' teams and one girls' team. The District informed OCR that beginning in the 2016-2017 school year, it did not alert the media to publicize pre-season events held by teams and did not include these events on official published schedules; it informed all coaches they could hold such events if they wished to do so. The District reported that four boys' teams and one girls' team held such events.

Athletes noted that there is very little publicity provided for sports other than football and boys' basketball, which collectively had 37.2% of the male athletes at the School. Athletes from other sports noted that their events are not promoted on daily announcements, nor are their accomplishments featured; in particular, male and female athletes said the School did not publicize athletes who made it to the state competition, although some said the District provided extensive publicity when one male athlete qualified for a state competition.

The District indicated that its booster clubs produced a program for each season containing schedules for each team that season, with the football booster club coordinating the fall program,

the boys' basketball booster club coordinating the winter program, and the baseball booster club coordinating the spring program. The football and boys' basketball teams each had many more pages devoted to them in their respective programs than any other teams.

The District also produced poster-sized schedules for fall and winter seasons and pocket-sized schedules for fall, winter, and spring seasons; these schedules included each team in the particular season and allocated the same amount of space for each team.

According to the District, it does not provide publicity through social media, but individual coaches are permitted to establish social media accounts to support their teams.

Support Services

The Policy Interpretation states, "The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions." The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of support services: (1) the amount of administrative assistance provided to boys' and girls' programs; and (2) the amount of secretarial and clerical assistance provided to boys' and girls' programs.

There is one AD and one athletic secretary. Coaches from all sports indicated that the athletic office handles issues such as scheduling buses, while coaches generally keep their own statistics.

Only a few coaches have offices for coaching: there are offices in the football locker rooms, the boys' and girls' varsity locker rooms, and the wrestling room. Most coaches indicated that they have no need for an office for coaching. No coach indicated they held meetings in their offices; they said their teams meet any place they can, but not in office areas.

Analysis and Conclusion

Equipment and Supplies

After its on-site in September 2015, based upon its review of the quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies, OCR identified disparities on the basis of sex in that one girls' sport (softball) was not provided with a sufficient number of regulation helmets, and other poor quality equipment and supplies affected two girls' teams (softball and golf) and one boys' team (baseball), and because the only team that did not receive a sufficient amount of equipment and supplies was a girls' team (softball).

The disparities identified in the above paragraph that affected softball and girls' golf were not negligible or offset and were not a result of legitimate, non-discriminatory reasons. However, the evidence obtained in 2017 indicated that the District had corrected almost all of the deficiencies with the equipment and supplies. The only remaining issues are that the wrestling team is the only team that has its uniforms laundered and that the girls' track team is short just a few hurdles. OCR determined that these disparities are not sufficient to deny female athletes on

an overall basis equal opportunity to receive equipment and supplies. Because the District has corrected the deficiencies identified, there is insufficient evidence to establish that the District is currently in noncompliance with Title IX with regard to the provision of equipment and supplies.

Travel and Per Diem

The evidence revealed that the varsity football team, which includes 11.3% of all male participants, receives dining benefits that no other team receives, namely a meal before every game and, on one occasion, a meal after a game. In addition, the evidence revealed that boys' teams were the only teams to use charter buses for regular season trips in 2016-2017 and that the only team with a trip over 150 miles that did not use a charter bus was a girls' team. These disparities are not negligible or offset, and OCR found the disparities were not a result of legitimate, non-discriminatory reasons. Therefore, OCR determined that the evidence established that the District had failed to provide equal opportunity to male and female athletes in the area of travel and per diem, in violation of Title IX.

Availability, Assignment and Compensation of Coaches

With respect to the availability of coaches, OCR found that similar boys' and girls' teams generally have similar numbers of head and assistant coaches. While the only athletes or coaches who expressed any concern about availability were those in girls' sports, the ratios of players to coaches favor girls overall and girls' coaches were on average slightly more experienced than boys' coaches. No athletes expressed complaints about deficiencies in the quality of their coaches. As to the assignment of coaches, OCR did not find evidence to suggest that the slightly greater average coaching experience of girls' coaches than boys' coaches adversely affected the quality of coaching received by males or females.

In terms of the compensation of coaches, boys' teams had higher average head and assistant salaries than girls' teams, but OCR found no indication that the quality of coaching provided to athletes was affected by the salaries paid to the coaches and the disparity is offset as the ratio of coaches to athletes in these sports benefits girls. Therefore, OCR has determined that there is insufficient evidence to conclude that the District has failed to provide equal opportunity to male and female students with respect to the opportunity to receive coaching and the assignment and compensation of coaches.

Provision of Locker Rooms and Practice and Competitive Facilities

The evidence in fall 2015 established several disparities favoring boys over girls in the area of locker rooms and practice and competitive facilities. In particular, the softball field lacked amenities that were present at the baseball field. In addition, no female athlete had access to a high quality locker room, and many female athletes were provided locker facilities that were in poor condition. In comparison, the only male athletes who used a locker room in poor condition were the freshman football players.

The disparities identified in the above paragraph were not negligible or offset. However, the evidence obtained in 2017 indicated that the District had corrected the deficiencies with the

softball facilities and locker rooms, with the exception of the girls' swimming locker room that remains substandard. However, this deficiency is offset by the fact that the baseball team does not have a locker room of its own and the fact that the freshman football team uses a substandard locker room. Because during the course of OCR's investigation, the District has corrected the deficiencies identified, there is insufficient evidence to support a conclusion that the District is currently in noncompliance with Title IX with regard to the provision of locker rooms and practice and competitive facilities to male and female athletes.

Medical and Training Facilities and Services

The evidence established that all boys' and girls' teams have equivalent access to the trainer during practice times, that the weight and conditioning facility is available to all athletes and meets their needs, and that all male and female athletes have a choice of insurance coverage. The evidence established that the trainer attends home competitions for four boys' teams and three girls' teams, that the trainer attends away competitions in football only, and that a medical doctor is available only for football games. OCR determined that this disparity in access to a trainer or doctor for competitions is negligible, in that all athletes have sufficient access to necessary medical and training services, and is therefore not sufficient to deny equal opportunity to female athletes. Therefore, OCR determined there is insufficient evidence to conclude that the District has failed to provide equal opportunity to male and female students with respect to the provision of medical and training facilities and services.

Publicity

The evidence established that four boys' teams and only one girls' team has a promotional event prior to the start of their season; however, the District indicated that it no longer promotes these events. Testimony from male and female athletes alike indicated that football and boys' basketball, two sports that collectively represented 37.2% of male athletic participants, received extensive publicity and that all other sports, including all girls' sports, receive little publicity in the form of announcement and promotions of events and accomplishments at the School. In addition, the printed programs for fall and winter sports have devoted significantly more space to football and boys' basketball, and no comparable amounts of space to any girls' teams. The disparities identified are not negligible or offset and were not a result of legitimate, non-discriminatory reasons. Therefore, OCR determined that the District has failed to provide equal opportunity to male and female athletes in the area of publicity.

Support Services

The evidence established that the administrative and clerical services provided to boys' and girls' teams are minimal and appear to be provided equally by the athletic department personnel for boys' and girls' teams. In addition, the evidence established that coaches of four boys' teams and of four girls' teams have access to offices for their coaching duties. Therefore, OCR determined there is insufficient evidence to conclude that the District has failed to provide equal opportunity to male and female students with respect to the provision of support services.

Allegation #3

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, or other education program or activity operated by a recipient. The Title IX regulation, at 34 C.F.R. §§ 106.31(b)(2) and (b)(7), provides that recipients may not, on the basis of sex, provide different aid, benefits, or services or provide aid, benefits, or services in a different manner, or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

In analyzing an allegation of different treatment based on sex, OCR ascertains whether there were any apparent differences in the treatment of similarly situated individuals on the basis of sex. If this is found to be the case, then OCR assesses the recipient's explanation for any differences in the treatment to determine whether the reasons are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. In determining pretext, OCR examines whether the recipient treated the individual in a manner that was consistent with its established policies and procedures and whether there was any other evidence of discrimination on the basis of sex.

Facts

The Complainant said that each year, booster clubs for boys' teams give money for scholarships, while the girls' teams do not have the same opportunity to obtain scholarship awards.

The District indicated in 2015 that the swimming booster club provided a scholarship at the end of each year to one male and one female graduating member of the swim team, with the coaches selecting the recipients based on a pre-determined rubric and the amount determined by the swimming booster club. The District indicated that in 2014, no male student received an award, but a female athlete received an award that year.

The District also indicated in 2015 that all senior football players could apply for a scholarship through the Quarterback Club. The District indicated that the club's scholarship committee determined the number of awards; the total amount awarded could not exceed \$6000, and no player could receive more than \$2000. In 2014-2015, four players received these scholarships.

The District further reported in 2015 that the baseball booster club offered scholarships of up to \$500 for students who played baseball all four years and participated in fundraisers. Students applied through the booster club's scholarship committee for these awards. In 2014-2015, five male students received these awards.

In January 2017, the District reported that in 2015-2016, 11 football players, 8 baseball players, 3 boys' swimmers, 1 wrestler, and 1 girls' swimmer received scholarships; 23 male athletes received scholarships totaling \$11,850 and one female athlete received a scholarship totaling \$250. The District also indicated that beginning in the 2017-2018 school year, when it has one

booster club, the club would ensure that if it awards any scholarships, it does so in compliance with Title IX.

Analysis and Conclusion

The District advised OCR that it wished to resolve the allegation prior to completion of the investigation. It is appropriate to resolve this issue at this juncture because OCR's investigation has not proceeded to a point where a finding is clear. OCR would need to gather additional information, including about the District's involvement on any scholarship selection committee. The attached agreement fully resolves this allegation.

Allegation #4

Legal Standards

The Title IX implementing regulation, at 34 C.F.R. § 106.71, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established: (1) an individual experienced an adverse action caused by the recipient; and (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity.

If all of the elements of a *prima facie* case of retaliation are met, then OCR considers whether the recipient presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action. OCR determines whether the legitimate, non-retaliatory reason is credible by considering all relevant evidence, such as changes in the treatment of the individual after the protected activity occurred, the proximity in time between the protected activity and the adverse action, the recipient's treatment of the individual compared to similarly-situated individuals, and the recipient's deviation from established policies or practices.

Facts

Employee A said she filed an internal grievance in June 2014 alleging discrimination based on sex in the athletics program (internal grievance). The District investigated the grievance and issued a letter in July 2014 to Employee A identifying steps the District was taking to "ensure that all of our athletic teams are treated fairly and equitably as we move forward."

Elimination of Freshman Softball Team and an Assistant Coaching Position

Employee A said that the District eliminated the freshman softball team and a softball assistant coaching position in retaliation for her internal grievance. She told OCR that, prior to the 2015 season, the softball team had three assistant coaches regardless of the number of athletes who participated on the team.

The Superintendent denied that she eliminated a softball assistant coaching position and the freshman softball team in retaliation for Employee A's internal grievance. The Superintendent told OCR that she made the decision not to fill a vacant position for a third assistant softball coach for spring 2015 when an assistant softball coach resigned. She said the teaching contract specifies that softball will have three assistant coaches "if needed." The District provided OCR a copy of the appendix to the contract, which specifies that there will be three softball assistant coaches, but that one position is "dependent on participation season to season." The Superintendent and AD told OCR that the District projected that the softball team would only have 26 players, which was not enough to support three teams. The Superintendent said that she did not "eliminate" the freshman softball team at this time because, upon request of Employee A, the previous two years the softball program just had Freshman-Sophomore and Varsity squads.

Employee A acknowledged to OCR that the teaching contract specifies a third assistant coach will be provided depending on the number of softball athletes, but stated that in previous years a third assistant coach had been provided regardless of the number of athletes participating. Employee A denied that she requested not to play three separate levels, but stated that she has in the past played sophomore and freshman softball athletes "up and down," meaning that when necessary she will play freshmen on the sophomore team and vice versa. She stated that she never agreed to eliminate the freshman level. She told OCR that in fall 2014, the AD asked her if he could combine the schedules for the freshman and sophomore teams, to which she agreed because it was her understanding that he would only be printing the two schedules on the same piece of paper; she did not understand that by combining the schedules the District would eliminate the freshman level entirely.

The AD said the number of softball athletes had been going down and they had not played a separate freshman schedule in 2013 or 2014, but had games called "Freshman/Sophomore" games. The AD said eliminating the freshman level made sense due to participation numbers because he did not want to schedule games that he would have had to cancel and did not want to answer to parents asking why their daughters were playing five days a week in both the freshman and sophomore games. The AD said the softball program has the same number of assistant coaches as the baseball program even though baseball has three levels and more players.

Denial of Softball Team's Opportunity to Play Game at Illinois Wesleyan

Employee A said that the District denied the varsity softball team the opportunity to play a game at Illinois Wesleyan University on May 18, 2015, in retaliation for her internal grievance. She told OCR that the District had approved her request to allow the varsity softball team to play a nonconference game against Normal University High School (U High) at Illinois Wesleyan. She said this was a great opportunity for the softball athletes to play in a university facility and in the

presence of college coaches. Employee A said that a conference game was cancelled due to rain the week of May 11, which under conference rules, had to be made up the following Monday, May 18. Employee A said she asked the opposing team's coach whether he would agree to play that make-up game at Illinois Wesleyan as a doubleheader so that the District's varsity team would not miss out on the opportunity to play at the university as scheduled. She said the opposing team's coach agreed after obtaining approval from his athletic director. However, the AD decided to cancel the game scheduled against U High and required the District to play the conference make-up game at home, stating that he believed that the varsity team needed a win and they played better at home.

The AD denied that he cancelled the nonconference game to retaliate against Employee A for her internal grievance, and indicated that the fact he approved that game in the first place belies such a claim. He told OCR that his decision to cancel the nonconference game was based solely on the fact that a conference game had been cancelled due to rain. He said under conference rules, that game had to be made up the following Monday and it took precedence over the nonconference game at Illinois Wesleyan. He stated that make-up games are played on the field they originally were scheduled to be played. Employee A acknowledged that conference rules provide that make-up games should be played at the same location, but stated that the location could be changed upon agreement of the parties involved and provided examples of instances where other teams in the conference did this. She stated, however, that to her knowledge the AD has not approved a different location for a make-up game in the past for any other athletic team in the District.

Enforcement of Dress Code for Teachers

Employee A said that the District retaliated against her for filing her internal grievance when, during a performance evaluation during the 2014-2015 school year, she was told she should no longer wear shorts in the classroom. Employee A stated that she was not marked down on her evaluation for this. She stated that she was told that other teachers who also had typically worn shorts were also being told they would have to wear pants in the classroom. However, she noticed thereafter that the driver's education teachers continued to wear shorts.

The PE department chair said one of the questions on the progress monitoring form is whether a teacher shows professionalism; he said he marked Employee A's performance in this area as satisfactory, but noted that she needed to dress professionally and could not wear shorts because she was a full-time classroom teacher. The Superintendent told OCR that professional dress is required for teachers at the School. She said that they do not want teachers wearing jeans or shorts in the classroom, except on Fridays, and that department chairs are responsible for ensuring teachers dress appropriately. She said PE teachers are allowed to wear shorts and warm-ups. The Superintendent said that Employee A, even though she is overseen by the PE department chair, is not a PE teacher, but teaches health in the classroom all day, so she is not permitted to wear what the PE teachers are allowed to wear. The Superintendent said that in the past, when Employee A also taught PE, she was allowed to wear shorts. Employee A agrees that she was allowed to wear shorts as a PE teacher, but stated that the District has not enforced its dress policy uniformly as it has allowed other teachers who teach in the classroom all day to wear shorts. In support of her claim, she provided OCR examples of instances where a teacher in

another department and a substitute teacher wore shorts in the classroom during the 2015-2016 school year. The Superintendent said the dress policy for teachers has not been enforced any differently with respect to Employee A than it has been for anyone else who teaches in the classroom all day. The PE department chair said the department has one other teacher who teaches only health; he said this teacher did not wear shorts.

Refusal to Sell Cookies to Softball Booster Club in the Future

Employee A said that the District's Culinary Arts Director (Culinary Director) retaliated against her for her internal grievance when in April 2015 she overcharged the softball booster club for cookies and told Employee A that she could not order cookies in the future.

Employee A told OCR that organizations can order cookies through the District's culinary arts program. She said that in spring 2015, she received a quote from the Culinary Director of \$2 per dozen if 50 dozen or more were ordered. She said she ordered 100 dozen on behalf of the softball booster club, but was charged \$300 instead of \$200. She said when she brought the price discrepancy to the Culinary Director's attention, the Culinary Director honored the lower price but told Employee A in an e-mail that "she [would not] be available to do it again, at any cost." The Complainant contends that the Culinary Director has refused to sell the softball booster club cookies in retaliation for Employee A's internal grievance.

The Culinary Director told OCR she was not aware of Employee A's internal grievance and denied engaging in retaliation against her. She said she sent the softball booster club an invoice for \$3 a dozen because that is the price she always charges and receives, and she did not recall quoting the softball booster club the lower price. However, she said she honored the lower price when Employee A raised the issue. The Culinary Director denied telling Employee A that she could not order cookies from her again in the future. She said the order for 100 dozen was the largest order the culinary arts program has ever received and it was very difficult for her students to bake that many. She said that her reference in the e-mail to Employee A that she could not "do it again, at any cost" was referring to filling such a large order.

Refusal to Address Negative E-mail about Employee A

Employee A said that the District retaliated against her for filing her internal grievance when it failed to address an e-mail another District employee circulated to District staff in spring 2015 implying that the teachers did not receive a raise in the new teacher's contract because of Employee A. Employee A told OCR that, shortly after the union voted down a new contract offer, one of her colleagues shared with her an e-mail that another District employee had sent to certain staff that blamed the new softball field for the lack of a raise for teachers. On a photograph of the field he wrote, "Here's the only green you'll ever see. Thanks a lot [Employee A's first name]." She said she asked both the former and current superintendents to address this harassment, and to clarify to staff that funds used to renovate the softball field were not part of the funds that could be used for teacher salaries, but neither took action in response.

The Superintendent told OCR that an e-mail casting Employee A in a negative light by a peer surfaced when Employee A requested e-mails through the Freedom of Information Act. She said

this e-mail apparently was from one employee to another during negotiations over the teacher's contract. The Superintendent did not view Employee A's request to address the negative e-mail as a Title IX grievance alleging discrimination or retaliation and Employee A did not specifically characterize it as such. She said Employee A was very vocal and there was a lot of "bad blood" between people. She indicated to OCR that she did not feel she was in a position to respond to the e-mail, as the District does not have a policy of policing staff e-mails, particularly when they occur between bargaining unit employees in the context of union contract discussions.

Analysis and Conclusion

OCR determined that Employee A engaged in a protected activity of which the District had notice in June 2014 when she filed an internal grievance alleging sex discrimination in the District's athletic programs.

With respect to the allegation regarding enforcement of the softball booster club's purchase of cookies, OCR concluded that the District did not subject Employee A to an adverse action. The evidence established that the Culinary Director honored the lower price Employee A said she had quoted. The Culinary Director was not aware of Employee A's protected activities and sent Employee A an e-mail stating she would not "do it again, at any cost," which she said meant she could not fill such a large order again in the future at any cost and not that the softball team would not be able to purchase cookies in the future. OCR thus concluded that the evidence does not establish a *prima facie* case of retaliation with regard to this allegation.

Regarding the dress code, although Employee A was told during her performance review that she could not wear shorts in the classroom, she acknowledged that the District did not give her a negative performance rating because of it. Assuming for purposes of analysis that the inconsistent application of the dress code was an adverse action, the District provided a non-retaliatory justification for its action that was not a pretext for retaliation. District personnel stated that only PE teachers were permitted to wear shorts and that other teachers like Employee A who taught in the classroom were, like her, not permitted to wear shorts. OCR therefore concludes that there is insufficient evidence to establish that the District's enforcement of its dress code constituted retaliation against Employee A.

Regarding the allegations that the District eliminated the softball freshman team and an assistant softball coaching position, denied the varsity softball team the opportunity to play at Illinois Wesleyan, and failed to address a negative e-mail about Employee A, OCR assumed for purposes of analysis that these were adverse actions and also assumed a causal connection to Employee A's protected activity. OCR therefore assumed that a *prima facie* case of retaliation is established with respect to these allegations.

OCR also determined, however, that the evidence is insufficient to establish retaliation by the District with respect to any of these allegations. In making a determination regarding compliance, OCR must often weigh conflicting evidence to determine whether the preponderance of the evidence substantiates the allegation. Regarding the District's elimination of the freshman softball team and decision not to fill an assistant coaching position, the Superintendent and AD told OCR that they took these actions because the number of softball

athletes did not support three levels or a third assistant softball coach, and pointed to the fact that the previous two years the freshman had not played a separate schedule. Although Employee A disagrees that the freshman did not play a separate schedule, she acknowledges that sophomores and freshmen played on both teams and that the teacher contract specifies the third assistant coach would be provided based on the number of softball athletes. OCR concluded therefore that Employee A cannot demonstrate that the District's proffered reason for these actions was a pretext for retaliation.

Regarding the allegation that the varsity softball team was denied the opportunity to play a nonconference game at Illinois Wesleyan, the AD told OCR that he cancelled that game only after a conference game was postponed due to rain and had to be made up on the day the nonconference game had been scheduled at Illinois Wesleyan. He said conference games take precedence over nonconference games and make-up games are played where they originally were scheduled to be played. Employee A contended that the AD should have permitted the team to make up that game at Illinois Wesleyan in a doubleheader. However, OCR uncovered no evidence demonstrating that the AD treated the scheduling of this make-up game differently than any other, nor did Employee A offer evidence demonstrating the proffered reason for his action was false or a pretext for retaliation.

Finally, regarding the negative e-mail, although Employee A contends the Superintendent should have addressed the e-mail once she became aware of it, the Superintendent told OCR the reason she did not take action is because she did not feel it was prudent to monitor communication between bargaining unit employees during contract negotiations, and her inaction was not due to any animus toward Employee A. The Superintendent also indicated that she did not view Employee A's request to address the e-mail as a Title IX grievance alleging retaliation by her peers. OCR uncovered no evidence demonstrating that the proffered reason for the Superintendent's inaction was false or a pretext for retaliation.

Based on the above, OCR has determined that the evidence is insufficient to conclude that the District subjected Employee A to retaliation as alleged in Allegation #4.

Overall Conclusion

This concludes OCR's investigation of the complaint and 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.

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 individual 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.

The complainant may file a private suit in Federal court, whether or not OCR finds a violation.

OCR will monitor the District's implementation of the enclosed Resolution Agreement, which will resolve the issues identified in this case.

We appreciate the cooperation you and your staff extended to OCR during the investigation of this complaint. In particular, we wish to thank Mr. Jay Greening, counsel for the District. If you have any questions, please contact Salina Gamboa, Senior Equal Opportunity Specialist, at 312-730-1627 or by email at Salina.Gamboa@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Jay Greening