

Libertyville School District 70
Resolution Agreement
OCR Case #05-16-1181

Libertyville School District 70 (District) agrees to fully implement this resolution agreement (Agreement) to resolve the U.S. Department of Education, Office for Civil Rights (OCR), case number 05-16-1181, and to ensure its compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, with respect to the issue of whether the selection of interscholastic sports at the District's Highland Middle School (School) effectively accommodates the interests and abilities of male and female students to the extent necessary to provide equal athletic opportunities. This Agreement pertains solely to the School, which is the only middle school (grades 6-8) in the District, and not the District's elementary schools (grades K-5).

I. DEMONSTRATION OF CURRENT COMPLIANCE

A. Participation opportunities

The District will provide interscholastic athletics participation opportunities for female and male students in grades 6 through 8 at the School that effectively accommodate their interests and abilities to the extent necessary to provide equal athletic opportunities, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies.

Accordingly, the District will demonstrate compliance with any one part of the Three-Part Test of compliance¹ at the School by documenting:

1. by **April 1, 2017**, that the School is providing interscholastic level participation opportunities for female and male students in numbers that are substantially proportionate to their respective enrollments (Part One); or
2. by **November 1, 2016**, that the School has a history and continuing practice of interscholastic athletic program expansion that is demonstrably responsive to the developing interests and abilities of students at the School who are members of the underrepresented, in this case girls (Part Two); or

¹On December 11, 1979, the Department issued its Intercollegiate Athletics Policy Interpretation, at 44 *Fed. Reg.* 71,413 *et seq.* which further clarified OCR's Title IX athletics requirements. The Policy Interpretation is generally applicable to interscholastic athletics and states that OCR will apply the following three-part test to assess whether an institution is providing nondiscriminatory athletic participation opportunities: 1) whether interscholastic participation opportunities are provided in numbers substantially proportionate to the respective enrollments of boys and girls; or 2) where one sex is underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the members of that sex; or 3) where one sex is underrepresented among interscholastic athletes and the institution cannot show a history and continuing practice of program expansion, whether the interests and abilities of the underrepresented sex are fully and effectively accommodated by the present program. *Id.* at 71418.

3. by **January 20, 2017**, that the interests and abilities of female students at the School are fully and effectively accommodated by the School's current interscholastic athletics program (Part Three).

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. The District has the option to choose any one Part of the Three-Part Test with which the School will comply.

B. Substantial proportionality in participation rates in interscholastic athletics program (Part One)

Should the District elect to demonstrate compliance with Part One of the Three-Part Test referenced above, then the District will compare the rates of enrollment of its female and male students at the School for the 2016-17 school year with their rates of participation in the School's interscholastic athletics program (based on participation rates for all interscholastic sports during the fall, winter, and spring seasons of the 2016-2017 school year) to determine if they are substantially proportionate.

1. Enrollment rates at the School will be calculated using those enrollment numbers, by sex, the School reported to the Illinois State Board of Education.
2. The interscholastic athletic participation rates² of female and male students at the School will reflect the total number of females and males listed on the rosters (for all competitive levels) for each interscholastic sport on the date of the first competition for each sport. The participation rates should not include participants in intramural, club or non-competitive athletic activities.

C. History and continuing practice of interscholastic athletic program expansion (Part Two)

Should the District elect to demonstrate compliance with Part Two of the Three-Part Test referenced above, then the School will complete an evaluation that objectively assesses whether it has a history and continuing practice at the School of program expansion that is demonstrably responsive to the developing interests and abilities of members of the

²In accordance with the Policy Interpretation, OCR defines a participant as those who are receiving institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and who are listed on the eligibility or squad lists maintained for each sport, or who, because of injury, cannot meet the criteria above, but continue to receive financial aid on the basis of athletic ability.

underrepresented sex. The School's evaluation will be based on multiple factors, including:

1. The School's record of adding interscholastic teams or levels for members of the underrepresented sex at the School or upgrading teams to interscholastic status and increasing the numbers of participants at the School who are members of the underrepresented sex in interscholastic athletics;
2. Affirmative responses to requests by students or others for addition or elevation of sports/levels for students at the School who are members of the underrepresented sex;
3. The existence and implementation of a nondiscriminatory policy or procedure for requesting the addition of sports/levels (including the elevation of club or intramural teams) at the School and the effective communication of the policy or procedure to School students and parents;
4. The existence and implementation of a plan of program expansion that is responsive to the developing interests and abilities of members of the underrepresented sex at the School; and
5. Efforts to monitor the developing interests and abilities of members of the underrepresented sex at the School, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

D. Full and effective accommodation of student interests and abilities (Part Three)

Should the District elect to demonstrate compliance with Part Three of the Three-Part Test referenced above, then the School will conduct and complete an objective assessment to determine the existence and/or scope of any unmet athletic interests of the underrepresented sex in the School's interscholastic athletics programs. The assessment will also consider whether the interested students have the ability to sustain an interscholastic team, noting that they do not need the ability to sustain a successful or elite team, but only need to show that they have the potential to participate in team try-outs, practices and competitions and, with coaching, the potential to attain sufficient ability to participate at the particular level of competition in which they have expressed interest. The assessment will be based on multiple indicators of interests and, if applicable, multiple indicators of abilities, and shall include the following:

1. A survey approved by OCR for the 2016-17 school year of female students at the School and 5th grade female students at District schools that feed into the School. The survey shall seek information on female students' interest and, if applicable,

- ability to participate in sports and levels currently offered and in sports and levels not currently offered by the School.
2. A review of the results of other recent surveys of students, if any, or other information collected from students using a method that was designed to fully and accurately assess unmet athletic interests and, if applicable, abilities in interscholastic sports among female students.
 3. Identification of sports, squads, and levels of sports for female students that are not currently offered by the School but are offered either by schools that compete within the league(s) in which the School competes or by schools that are within the School's normal competitive region and geographic area.
 4. For the 2015-16 and 2016-17 school years, identification of the number of female students participating in each club sport, each intramural sport, and each sport offered during physical education courses that are offered in the School, and the number of School girls participating in community sports leagues, clubs or other youth programs offered in the School's normal competitive region and geographic area.
 5. For the 2014-15, 2015-16 and 2016-17 school years, identification of the number of female students who were cut from each interscholastic team at the School and the reasons they were cut, to assess whether any of those students had or have the ability to compete in that sport and whether sufficient numbers of students were cut to sustain another level in that sport.
 6. A review of any requests (whether oral, written, formal or informal) made to School Board Members, District administrators, coaches, or staff by or on behalf of female students at the School to add a particular sport, squad, or level of sport, or to elevate an existing club or intramural sport to interscholastic sport status. This review may be limited to requests that were received during the 2014-15, 2015-16, and 2016-17 school years.
 7. Identification of all interscholastic girls' teams that have been eliminated at the School in the past ten school years.
 8. For 2014-15, 2015-16 and 2016-17 school years, if applicable, a review of any assessments made by School coaches or staff during tryouts, or observations of students participating in club or intramural competition offered by the School or in community sports leagues, clubs or other youth programs offered in the School's normal competitive region and geographic area, and other information reflecting the ability of female students to compete in a particular sport, prior participation in that sport or a similar sport at the middle school level or intramural, club or community

level, general athletic ability, participation in other sports, the nature of the particular sport, and other relevant factors.

9. Any other information that demonstrates the athletic interests and, if applicable, abilities of female students in the School.

REPORTING REQUIREMENTS - SECTION I

- A. Should the District elect to demonstrate compliance with Part One of the Three-Part Test referenced above, then by April 1, 2017, the District will provide OCR with a detailed report, with copies of supporting documents, reflecting the School's evaluation of the proportions of female and male students participating in interscholastic athletics at the School conducted pursuant to section I.B. of this Agreement. The report will include, at a minimum, a copy of the enrollment and interscholastic athletics participation data that the School relied on in determining whether the School is providing substantially proportionate interscholastic athletic participation opportunities to male and female students, a copy of all team rosters for each sport showing students, by sex, and other information reflecting the basis for the School's evaluation.
- B. Should the District elect to demonstrate compliance with Part Two of the Three-Part Test referenced above, then by November 1, 2016, the District will provide OCR with a detailed report containing the District's evaluation as described and enumerated in section I.C. of this Agreement, including the assessment and results thereon as well as all supporting documentation.
- C. Should the District elect to demonstrate compliance with Part Three of the Three-Part Test referenced above, the District will submit the following information to OCR:
 1. By October 7, 2016, a copy of the draft survey referenced in Section I.D.1., above, for OCR's review and approval.
 2. By October 7, 2016, a complete description of the planned methodology to conduct the survey, including how the survey will be distributed, the number of surveys to be distributed, any planned follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who will evaluate the responses to the surveys, and the protocol for retaining a copy of any notes or other documents compiled during the review of the surveys.
 3. By January 20, 2017, a detailed report describing the multi-factored assessment conducted pursuant to Section I.D. of this Agreement for the School. The report will include, at a minimum, the following information:

- a. A copy of the results of the survey referenced in Section I.D.1., above, including but not limited to: the number of students, by sport, who indicated an interest in each sport, a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, the grade levels of students who received the surveys, any follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who evaluated the responses to the surveys, and a copy of any notes or other documents compiled during the review of the surveys.
- b. An analysis of the results of any other recent surveys of students, if any, or other information collected from students using a method that was designed to fully and accurately assess unmet athletic interests and, if applicable, abilities in interscholastic sports among female students.
- c. A summary of sports, squads, and levels of sports for female students that are not currently offered by the School but are offered either by schools that compete within the league(s) in which the School competes or by schools that are within the School's normal competitive region and geographic area.
- d. For each school year (2015-16 and 2016-17), the number of female School students participating in:
 - i. Interscholastic sports, by sport
 - ii. Club sports, by sport;
 - iii. Intramural sports, by sport;
 - iv. Sports offered in physical education courses, by sport; and
 - v. Community and youth sports leagues or clubs in the local area.
- e. A summary of the number of female students who were cut from each School interscholastic team, and the reasons they were cut.
- f. For each school year (2014-15, 2015-16, and 2016-17), a copy of any written requests and a summary of any non-written requests made by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing club sport to interscholastic sport status.
- g. For each school year (2014-15, 2015-16, and 2016-17), a summary of any assessments made during tryouts, or other information reflecting the ability of female students to compete in a particular sport, prior participation in that sport or a similar sport at the middle school level or club or community level, general athletic ability, participation in other interscholastic sports, the nature of the particular sport, and other relevant factors.

- h. A description of any interscholastic team(s) that was eliminated by the School during the past ten school years, including the number of participants who were on the team, by gender, in the year it was eliminated and the reason for the team's elimination.
- i. Any other information that was considered by the School as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of female students at the School.

II. ACCOMODATION OF INTERESTS AND ABILITIES – ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES

- A. If the School is unable to demonstrate compliance pursuant to sections I.B, I.C. or I.D. of this Agreement, and if through the above-described assessment the School identifies a sport in which there is sufficient but unmet interest and, as applicable, ability of female students to participate at the interscholastic level at the School, the School will add athletics opportunities as described below at the School until such time as either (1) the School is fully and effectively accommodating the expressed interests and abilities of female students (i.e., there remains no unmet interest and ability); or (2) the participation rate for female students in the School's interscholastic athletics program is substantially proportionate to their rate of enrollment at the School.

For purposes of this provision, "sufficient interest" is defined as the minimum number of athletes needed to support a team. For "sufficient ability," it is sufficient that interested students and admitted students have the potential to sustain an interscholastic team and students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through try-outs or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest.

In providing additional athletic opportunities for female students to either accommodate their expressed interests and abilities or until their rate of participation is substantially proportionate to their rate of enrollment at the School, the District shall do the following:

1. Sports Currently Offered

- a. The District will determine, for sports that are currently offered as interscholastic sports at the School, whether there is a sufficient number of female students with the interest and, as applicable, ability to support the creation of additional levels of competition or multiple squads at the same level of competition, and sufficient competition within the School's normal competitive region, to support additional levels of competition or multiple squads at the same level of competition in those

sports. If so, the School will add additional levels of competition or squads at the same or a lower level of competition at the School in those sports by no later than the 2017-18 school year.

- b. In order to increase the competitive participation opportunities for female students, the School will consider expanding the squad sizes for interscholastic sports currently offered at the School, consistent with the nature of each sport and the level of interest in each sport. The School will increase the size of each squad where determined to be appropriate. If necessary, the School will provide sufficient coaching staff to support the addition of new athletes to any given squad and take any other steps necessary to ensure that the new athletes on each expanded squad are provided meaningful opportunities to participate in interscholastic athletics.

2. Sports Not Currently Offered

The District will determine whether there is a sufficient number of female students at the School with sufficient interest and, as applicable, ability to support the addition of a team or multiple teams in sports not currently offered by the School as interscholastic sports, and whether there is sufficient competition within the School's normal competitive region and geographic area for those teams/sports. If so, the District will add a team or multiple teams in those sports at the School by no later than the 2017-18 school year.

3. Response to Developing Interests and Abilities

For any sport that is not currently offered by the School where there is a sufficient number of female students who have sufficient interest and, if applicable, ability in that sport, but where the District determines that there is not sufficient competition within the School's normal competitive region, then the District will take ongoing steps to develop students' interests and abilities. These steps may include establishing intramural or club sports, exploring the feasibility of establishing competition in the School's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.

4. Elimination of Athletic Teams

OCR has made clear to the District and the District understands that OCR does not require or encourage the elimination of any School interscholastic athletic teams and that it seeks action from the District that does not involve the elimination of any athletic opportunities, because nothing in Title IX or the three-part test requires an institution to cut teams or reduce opportunities for students who are participating in interscholastic athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students.

5. Additional Interscholastic Opportunities

To the extent that the District adds any sports or additional levels of teams at the School, the District will provide those teams in a manner comparable to other interscholastic teams, with sufficient funds in their budgets to cover expenses that include, but are not limited to: coaches, equipment and supplies, travel funds, and publicity and support services. The District will also publicize through its customary methods any new sports or additional levels of teams through established communication delivery systems, including electronic communication.

REPORTING REQUIREMENTS - SECTION II

- A. Within sixty (60) days after notification by OCR that the District was unable to demonstrate compliance pursuant to sections I.B., I.C., or I.D. of this Agreement and if the District was obligated to offer additional athletic opportunities pursuant to Section II of this Agreement, the District will provide OCR with a detailed report that reflects the steps taken by the District pursuant to Sections II(A)(1)-(5) of this Agreement, to create additional opportunities at the School for female students as the underrepresented sex. This report will detail the timetable for the addition of new sports, levels of sports or newly-created intramural, club and/or other opportunities added pursuant to this Agreement. It will also describe how the creation of additional athletics opportunities taken pursuant to this Agreement will either (1) fully and effectively accommodate the expressed interests and abilities of female students (*i.e.*, there remains no unmet interest and ability); or (2) elevate female students' participation rate in the School's interscholastic athletics program to be substantially proportionate to their rate of enrollment in the School.
- B. For the 2017-18 and 2018-19 school years, by September 1 for fall sports, December 1 for winter sports and May 1 for spring sports, the District will provide OCR with a copy of the squad list for each team at the School, as verified and attested to by the Athletic Director or coach of each team.
- C. By September 30 of each school year covered by this Agreement (2017-18 and 2018-19 school years), the District will provide information demonstrating the breakdown/enrollment by sex at the School.
- D. For the 2017-18 and 2018-19 school years, by September 1 for fall sports, December 1 for winter sports and May 1 for spring sports, the District will provide information describing any increases to the size of School squads, as described by Section II.(A)1.b. above.

ADDITIONAL COMMITMENTS TO IMPROVE THE ATHLETIC OPPORTUNITIES FOR THE UNDERREPRESENTED SEX

- A. The District will develop a process or procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at the School. The procedure will be written and notice of it will be published by November 1, 2016 in the Student Handbook and the individual responsible for responding to any requests will be identified by name and contact information. This information will also be displayed prominently on the School's website by November 1, 2016.
- B. At the beginning of each school year, the District will provide written notice, in electronic form, to School coaches, physical education teachers, guidance counselors and principals, of all sports offered at the School.
- C. At the beginning of each semester of each school year, the District will provide a written description, in electronic form, of all of its sports offerings at the School to all School students. This information will also be posted on the School's website.
- D. The District will maintain the School's interscholastic athletic squad lists, which shall reflect the participation numbers for each sport, by sex, as of each team's first competitive event. These records will not be destroyed or otherwise altered so that they can be submitted to OCR consistent with the terms of this Agreement.

REPORTING REQUIREMENTS - SECTION III

- A. By November 1, 2016, the District will submit a copy of its procedure for requesting new sports, as required by Section III.A, above, and a link to the location on its website where the revised procedure is located.
- B. By November 1, 2016, and September 1, 2017, the District will provide OCR with a copy of the notices provided to coaches and students, as required by Sections III.B and C, above, and a link to the location on its website where the notices are located.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1), which was at issue in this case.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1), which was at issue in this case.

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

Approved and agreed to on behalf of the District:

Superintendent or Designee
Libertyville School District 70

Date