



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

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CHICAGO, IL 60604

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

October 8, 2021

Mr. Sam Watkins
Superintendent
Peru Community Schools
Sent by email only to swatkins@peru.k12.in.us

Re: OCR Docket #05-21-1227

Dear Mr. Watkins:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities regarding the above-referenced complaint filed with OCR against Peru Community Schools (Corporation) alleging discrimination on the basis of sex.

Specifically, the complaint alleges that the Corporation discriminates against female athletes in the Corporation's high school interscholastic program on the basis of sex by failing to provide them equal opportunity in the provision of locker rooms and practice and competitive facilities.

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 at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex 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 Corporation is subject to this law.

During its investigation, OCR reviewed information provided by the Complainant and the Corporation. Prior to OCR making a finding in the case, the Corporation agreed to the enclosed Resolution Agreement (Agreement) to resolve the allegations. The basis for OCR's determination that the Agreement is appropriate is set forth below.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.41(a), states, "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis." The Title IX regulation, at 34 C.F.R. § 106.41(c), states, "A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes."

In determining whether equal opportunities are provided, pursuant to the Title IX regulation at 34 C.F.R. § 106.41(c)(7), OCR considers the program component of the provision of locker rooms and practice and competitive facilities. In determining compliance with the regulation,

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

OCR uses the Intercollegiate Athletics Policy Interpretation (Policy Interpretation) issued December 11, 1979, and found at 44 Fed. Reg. 71413 *et seq.*¹

OCR evaluates compliance by comparing the availability, quality, and kinds of benefits, opportunities, and treatment afforded members of both sexes. An institution is in compliance if the compared program components are equivalent; that is, equal or equal in effect. OCR examines the benefits, opportunities, and treatment of male and female athletes in the applicable program component and determines whether the same or similar benefits, opportunities, or treatment were provided for all students or, if not, whether the differences had a negative effect on one sex that resulted in a disparity. When OCR identifies disparities between the boys' and girls' teams (e.g., if a boys' team receives a superior benefit in some way), OCR considers whether the benefit provided to a team was offset by an unmatched benefit to any of the teams in the program of the opposite sex. In making this comparison, before OCR concludes that a benefit to one team offsets a benefit provided to a team of the opposite sex, OCR considers whether the offsetting benefits were equivalent or equal in effect. OCR finds a benefit offsetting only if it has the same or a similar effect on the student athlete(s) or team within the program component.

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

The Policy Interpretation lists six factors to be assessed in determining whether a recipient provides equal opportunities in the provision of locker rooms and practice and competitive facilities: (1) quality and availability of the facilities provided for practice and competitive events; (2) exclusivity of use of facilities² provided for practice and competitive events; (3) availability of locker rooms; (4) quality of locker rooms; (5) maintenance of practice and competitive facilities; and (6) preparation of facilities for practice and competitive events.

Facts

The Complainant stated that the softball field for Peru High School (School) is housed away from the School at the Tiger North Athletic Complex (the Complex), which opened in 2018. She stated that the softball field does not have any lighting nor a press box and has only one batting cage. In addition, she stated that the softball players must carpool or drive their own personal vehicles to the softball field. The Complainant stated that the School's baseball stadium is

¹ <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.

² Exclusive use of a facility refers to exclusive use at the time of a team's practice session or competition. Thus, exclusivity of use will be affected only if other teams, classes, or other groups use the facility at the same time as the team's practices or competitions.

located adjacent to the high school and has lights, a press box, and two batting cages. She stated that the baseball team utilizes locker rooms housed in the high school, whereas the softball team uses the public restroom at the Complex as a locker room.

The Corporation operates the following sports at the School: football, girls' soccer, boys' soccer, cross country, girls' tennis, boys' tennis, girls' golf, boys' golf, volleyball, wrestling, gymnastics, baseball, softball, girls' basketball, boys' basketball, girls' track, and boys' track.

Practice and Competitive Facilities

The Corporation utilizes on and off campus facilities for the School's interscholastic athletic program. The School's on-campus facilities include the Tig-Arena, the Tiger Den, the Bengal Memorial Stadium, and the Peru Tiger Field. Off campus, the School uses the Complex, the Rock Hollow Golf Course, and Thrush Courts. Information provided by the Corporation did not identify the facilities for the School's cross country team, or the amenities available at each facility, except as noted below.

The wrestling, volleyball, and boys' and girls' basketball teams utilize the Tig-Arena for competitive events, but the Corporation did not identify whether the teams use the facility for practices.

The gymnastics, wrestling, volleyball and boys' and girls' basketball teams utilize the Tiger Den for competitive events, but the Corporation did not identify whether the teams use the facility for practices.

The boys' and girls' track teams utilize Bengal Memorial Stadium for practices, and the football and boys' and girls' track teams utilize the facility for home competitions.

The baseball team utilizes Peru Tiger Field for practices and for home competitions. The facility contains two outdoor batting cages, lights, and a press box.

The Corporation notified OCR that after a community member donated land north of Peru High School, the School constructed the Complex to provide a field for softball and boys' and girls' soccer, as well as a practice football field. Up until 2018 when the softball diamond was construed as part of the Complex, the Corporation did not have its own softball field but rented a park from the City of Peru for the softball team.

The Complex is located 0.8 miles from the School. The softball, boys' and girls' soccer, and football teams utilize the facility for practices. The softball and boys' and girls' soccer teams utilize the facility for home games. The facility has a concession stand and restrooms. The softball field has a press box, one batting cage, a pitching machine, a wireless sound system, a scoreboard, and an irrigation system; the Corporation asserted that the lone batting cage at the softball field is of better quality than the two batting cages at the Peru Tiger Field used by the baseball team. The Corporation stated that it had plans for installation of "lights, landscaping, a walking path, and additional parking" at the softball field at the Complex, but they were delayed due to funding issues. The Corporation also said only one softball game has ended early because

of the lack of lights at the field in the three years since the facility was built. On September 3, 2021, the Corporation informed OCR that it had ordered lights for the softball field and expected to complete their installation by November 2021.

The Rock Hollow Golf Course is located 3.5 miles from the School. The boys' and girls' golf teams utilize the course for practices and home tournaments.

Thrush Courts are located 1.5 miles from the School. The boys' and girls' tennis teams utilize the courts for practices and home meets.

Locker Rooms

The baseball team utilizes locker rooms at the School "associated with" the Tiger Den; the Corporation reports that none of the locker rooms at the Tiger Den facility have been "significantly" updated since 1972. There are also restrooms in the locker room area. Information provided by the Corporation did not identify any other teams that use the same locker room during the baseball team's season.

The Complainant reported that the softball team uses a restroom at the Complex as its locker room for changing before practices and games, while the Corporation informed OCR that the softball team is assigned a locker room at the School "associated with" the Tiger Den for the softball team's exclusive use. The Corporation informed OCR that the Corporation provides a transportation bus to and from the School before and after each practice to allow the softball team the ability to utilize the assigned locker room. There are also restrooms in the locker room area.

The football team locker room is located in the Junior High School and was last updated in 2013. The locker room is located 0.1 mile from the stadium and 0.1 mile from the School. According to the Corporation, the team has exclusive access to the locker room.

The volleyball team locker room is located at the School and "associated with" the Tig-Arena. The Corporation reported that none of the locker rooms associated with Tig-Arena have been "significantly" updated since 1972. Information provided by the Corporation did not identify any other teams that use the same locker room during the volleyball team's season.

The wrestling team locker room is located at the School, adjacent to the Tiger Den. The Corporation reported that the locker room has not been "significantly" updated since 1972. Information provided by the Corporation did not identify any other teams that use the same locker room during the wrestling team's season.

The locker rooms for the girls' and boys' soccer teams are located at the School and "associated with" the Tiger Den. Information provided by the Corporation did not identify any other teams that use the same locker room during each team's season.

The locker rooms for the girls' and boys' basketball teams are located at the School and "associated with" the Tig-Arena. Information provided by the Corporation did not identify any other teams that use the same locker room during each team's season.

The locker rooms for the boys' and girls' track team are located at the School and "associated with" the Tig-Arena. Information provided by the Corporation did not identify any other teams that use the same locker room during each team's season.

The Corporation did not identify the location of the locker rooms for the cross country, golf, gymnastics, and tennis teams and whether the teams have exclusive access to locker rooms during their seasons. The Corporation also did not provide information regarding the number of lockers in each locker room and whether each athlete is provided his or her own locker.

Internal Grievance

In May 2021, the Corporation received an internal grievance alleging that the Corporation was discriminating on the basis of sex against the softball team, due to the lack of lights and the lesser number of batting cages at the softball field than at the baseball field. The Superintendent, who is the Corporation's Title IX Coordinator, conducted an investigation by interviewing the grievant, the Athletic Director/Baseball Coach, the Softball Coach, and the School's Principal, and surveying members of the baseball and softball teams. The baseball field's lighting, access to the locker rooms, concession stands, and parking were the items most frequently considered by students to be superior compared to the softball field amenities. In addition, student survey comments suggested that the lack of lights caused junior varsity softball games to be shortened or cancelled when varsity softball games ran long.

The Superintendent prepared a report dated May 21, 2021, regarding the grievance. The report stated that the evidence collected by the Corporation established differences between boys' teams and girls' teams in that the softball field does not have lights and has only one batting cage, whereas the baseball field has lights and two batting cages. The report stated that "the evidence shows that the School likely failed to provide equal athletic opportunities to the girls' softball team with respect to the provision of locker rooms and practice and competitive facilities." The report provided recommendations, including that the School install lighting at the softball field.

Analysis and Conclusion

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the Corporation expressed interest in resolving the complaint.

While OCR has not yet conducted interviews with coaches and athletes nor visited the Corporation to assess the quality or maintenance and preparation of the locker rooms and practice and competitive facilities, OCR has identified concerns, particularly the apparent disparity between the current amenities at the baseball field and the softball field and the

proximity of the baseball team locker rooms to the field as compared to the softball team facilities. OCR determined that a resolution agreement with the Corporation is appropriate under the circumstances presented by this case.

The enclosed Agreement, when fully implemented, will address all of the allegations investigated. The provisions of the Agreement are aligned with the allegations in the complaint and the information obtained during OCR's investigation to date and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's resolution activities regarding the complaint and should not be interpreted to address the Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The 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.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

It is also important for you to understand that the laws OCR enforces also prohibit the Corporation from harassing, coercing, intimidating, or discriminating against an individual because the individual filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint against the Corporation with OCR.

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 privacy.

OCR would like to thank the Corporation, and particularly Shyann Boyer, counsel for the Corporation, for the cooperation and courtesy extended to OCR during our investigation. If you have any questions regarding this matter, please contact Salina Lopez, Senior Equal Opportunity Specialist, at 312-730-1627 or by email at Salina.Lopez@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Shyann Boyer (sent via email only to sboyer@cchalaw.com)