



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

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March 9, 2022

Dr. Jeff Hill
Superintendent
Morton Community Unit School District 709
1050 S. Fourth Ave. #200
Morton, IL 61550

Sent via email only to: jeff.hill@mcusd709.org

OCR Case No. 05-21-1346

Dear Dr. Hill:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities regarding the above-referenced case filed with OCR against the Morton Community Unit School District 709 (District) alleging the District discriminates against female students on the basis of sex in its interscholastic athletics programs. The complaint alleged the District discriminates against female students by failing to provide equal athletic opportunities in its interscholastic athletics program at Morton High School (MHS) by not effectively accommodating the interests and abilities of its female students, and in the program components of (1) the provision of locker rooms, practice and competitive facilities, and (2) equipment and supplies. The complaint also alleged the District fails to provide equal athletic opportunities in its interscholastic athletics program at Morton Junior High (MJH) in the provision of locker rooms, practice and competitive facilities.

OCR enforces 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, which prohibits discrimination on the basis of sex in any educational program or activity operated by a recipient of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX.

During its investigation, OCR reviewed documents provided by the Complainant and the District, interviewed the District's high school and junior high school Athletics Directors, and reviewed responses from District coaches and student athletes to an electronic survey administered by OCR. Prior to the conclusion of OCR's investigation, the District requested to resolve the complaint under Section 302 of OCR's Case Processing Manual. OCR determined that a 302 agreement is appropriate in this case. A summary of OCR's investigation to date and the 302 agreement follows.

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.”

- Effectively accommodating interests and abilities

The Title IX implementing regulation, at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies, require a recipient of Federal financial assistance from the Department to provide participation opportunities in its interscholastic athletics program for female and male students that equally and effectively accommodate the athletic interests and abilities of members of both sexes. OCR uses a three-part test to assess whether the interests and abilities of members of both sexes are being effectively accommodated to the extent necessary to provide an equal opportunity to participate in the interscholastic athletics program. A recipient may demonstrate compliance with Title IX by demonstrating compliance with any one part of the following Three-Part Test:

1. The recipient is providing interscholastic athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments; or
2. The recipient has a history and continuing practice of interscholastic athletics program expansion that is demonstrably responsive to the developing interests and abilities of students who are members of the underrepresented sex; or
3. The interests and abilities of students who are members of the underrepresented sex have been fully and effectively accommodated by the recipient’s current interscholastic athletics program.

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.

- Program Components

In addition, the Title IX regulations at 34 C.F.R. § 106.41(c)(2) and (7), require a recipient of Federal financial assistance from the Department to provide equal opportunities in the program components of equipment and supplies, and the provision of locker rooms, practice and competitive facilities. In determining compliance with the regulation, OCR uses the *Intercollegiate Athletics Policy Interpretation* (Policy Interpretation) issued December 11, 1979, found at 44 Fed. Reg. 71413 *et. seq.*¹

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

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 each factor relating to the benefits, opportunities or 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, and 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 only finds the benefit offsetting 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 opportunity 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 result 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.

Facts

The complaint alleged that the District provides more opportunities to participate in its interscholastic athletics program to male students than female students at MHS, that the softball facility is inferior to, has fewer amenities than, and is less well-maintained than the baseball facility used by MJH and MHS teams, and that the District provides more and better quality equipment and supplies to its male athletes at MHS.

Student Enrollment

The District has one high school, MHS, and one junior high school, MJH, which serves grades seven and eight. The enrollment at MHS and MJH, by sex, is included in the tables below:

MHS			MJH		
Enrollment, by sex			Enrollment, by sex		
	2019-2020	2020-2021		2019-2020	2020-2021
Boys	493 50.7%	504 50.9%	Boys	254 49.9%	250 49.8%
Girls	480 49.3%	487 49.1%	Girls	255 50.1%	252 50.2%
Total	973	991	Total	509	502

Interscholastic Athletics program

The MHS athletes compete in the Mid-Illini conference of the Illinois High School Association (IHSA). The District offers 9 boys' and 8 girls' IHSA-sanctioned sports teams at the high school level.² The MJH athletes compete in the Illinois Elementary School Association (IESA). The District offers 6 boys' (baseball, basketball, cross country, golf, track and field, and wrestling) and 6 girls' (softball, basketball, cross country, golf, track and field, and volleyball) IESA-sanctioned sports teams at MJH.

Interests and Abilities

During the 2019-2020 school year, the MHS's student ratio was 49.3% female and 50.7% male and its athletic participation rate was 40.1% female and 59.9% male, indicating a minus 9.2% difference in the participation and enrollment rates for females at MHS. During the 2020-2021 school year, the MHS's student ratio was 49.1% female and 50.9% male and its athletic participation rate was 38.6% female and 61.4% male, indicating a minus 10.5% difference in the participation and enrollment rates for females at MHS.

The MHS participation opportunities, by sport and sex, are included in the table below:

	Boys		Girls	
	2019-2020	2020-2021	2019-2020	2020-2021
Baseball	57	52	0	0
Basketball	45	42	39	38
Cross Country	27	28	33	25
Football	111	118	0	0
Golf	18	12	14	13
Soccer	45	42	29	40
Softball	0	0	19	14
Tennis	29	29	36	35
Track & Field	11	49	47	45
Volleyball	0	0	33	37
Wrestling	30	21	0	0
Total	373	393	250	247

The District has not added a new girls' sport or an additional level for a girls' sport at MHS since 1996. The District provided information indicating that girls' badminton was eliminated at MHS in 1981.

The District provided information showing that potential girls' athletic participants are cut from MHS teams. The District has also not conducted an interest survey at MHS in the last six years.

² The District also provides the opportunity for male and female students to participate in IHSA swimming and diving through a cooperative hosted by Washington High School. The MHS Athletics Director stated that typically five or six MHS students per sex participate in the swimming and diving cooperative.

Equipment and Supplies³

The Policy Interpretation lists five factors to be assessed 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.

The District allots each MHS interscholastic athletics team a yearly budget for equipment and supplies. In addition to the budget allocated by the District, each team has an “Activity Fund,” which can be used to purchase equipment and supplies, including practice clothing and additional uniforms. The Activity Fund is comprised of donations made specifically to a team, money raised by the team at fundraisers, and money raised by booster clubs. The football team currently is the only team with a designated booster club (the “Grid Iron Club”), and this booster club exclusively supports the football team. The MHS Athletics Director does not control or administer the Activity Fund account, nor does he take any steps to ensure the monies raised/donated and used are equitable.

The District provided OCR with the team budgets and line item expenses for the 2019-2020 and 2020-2021 school years, as well as the proposed team budgets for the 2021-2022 school year. Overall, the District’s total equipment and supply budget for 2019-2020 was \$68,725, with \$47,600 allocated to boys’ teams, \$16,650 allocated to girls’ teams, and \$4,475 allocated to the combined boys’/girls’ cross country teams. For 2020-2021, the District’s total equipment and supply budget was \$68,850, with \$49,625 allocated to boys’ teams, \$18,150 allocated to girls’ teams, and \$1,075 allocated to the combined boys’/girls’ cross country teams.

According to the MHS Athletics Director, the District provides one competition uniform to the following teams: boys’ and girls’ cross country (singlet and shorts), boys’ and girls’ tennis (polo tennis top and shorts/skorts), and boys’ and girls’ track and field (singlet and shorts). The District provides two sets of uniforms, typically “home” and “away” uniforms, to the following teams: boys’ baseball (jersey and pants), boys’ and girls’ basketball (jersey and shorts), boys’ football (jersey, pants, and helmet), boys’ and girls’ golf (two polo shirts), boys’ and girls’ soccer (jersey and shorts), girls’ softball (jersey and pants), girls’ volleyball (jersey and shorts), and boys’ wrestling (singlet). The District also provides warmups for the boys’ wrestling team. In addition to the District-provided competition uniforms, some teams use Activity Funds to purchase special uniforms, practice uniforms, and warmups.

The District provided a uniform replacement schedule, with uniforms being replaced as follows:

	Boys	Girls
2 years	Golf	Golf
3 years	Baseball Basketball Soccer Tennis Wrestling	Basketball Soccer Softball Tennis Volleyball
4 years	Cross country Football Track and Field	Cross country Track and Field

³ Due to the COVID-19 pandemic, OCR did not conduct an onsite visit to inspect the equipment and supplies provided by the District to its interscholastic athletic teams.

The following chart shows the uniform replacement schedule with the amount allocated, per sport:

	Boys		Girls	
	Replacement Year(s)	Amount	Replacement Year(s)	Amount
Baseball/Softball	2019-20 2023-24	\$3,400	2018-19 2022-23	\$3,000 \$3,400
Basketball	2020-21 2023-24	\$3,400	2019-20 2022-23	\$3,400
Cross Country	2019-20 2023-24	\$1,700	2019-20 2023-24	\$1,700
Football	2020-21	\$12,000	-	-
Golf	2019-20 2021-22	\$600 \$1,000	2019-20 2021-22	\$600 \$1,000
Soccer	2019-20 2022-23	\$3,000	2018-19 2021-22	\$2,500 \$3,000
Tennis	2019-20 2022-23	\$1,000	2019-20 2022-23	\$1,000
Track & Field	2019-20	\$3,500	2021-22	\$3,500
Volleyball	-	-	2020-21 2023-24	\$3,000
Wrestling	2019-20 2022-23	\$2,500	-	-

However, when comparing the budget documentation to the uniform replacement schedule provided by the District, the boys' basketball team was allocated a budget for each of the past three years, totaling \$29,200, despite being on a three-year uniform replacement schedule. The girls' basketball team, also on a three-year uniform replacement schedule, was allocated funds two years in a row, totaling \$6,800. The wrestling team also received an extra allocation of \$2,500 in 2020-2021 when one is not indicated on the uniform replacement schedule.

Upon reviewing the District's line items team budgets, OCR noted several instances in which the expenditures on the budget sheets did not seem to be inputted correctly. The MHS Athletics Director told OCR that he is responsible for budget allocations and that he allocates funds equitably amongst the teams. He was unaware of these discrepancies and indicated that discrepancies may be attributable to accounting errors.

Locker Room, Competitive and Practice Facilities⁴

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) 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.

⁴ Due to the COVID-19 pandemic, OCR was unable to view the District's facilities in-person. Instead, OCR relied on surveys conducted by OCR of District coaches and athletes for their assessment of the facilities.

The District utilizes District facilities as well as off-campus facilities, primarily Morton Park District facilities, for its interscholastic athletics programs at MJH and MHS.

On-campus Facilities

The West Gym serves as the main gymnasium for MHS. It was renovated in the summer of 2021. The MHS girls' volleyball team, and girls' and boys' basketball teams use the West Gym for practices and competitions. The MHS boys' wrestling team uses the West Gym for competitions.

The East Gym serves as the secondary gymnasium for MHS. The MHS boys' and girls' basketball teams use the East Gym for practices when the West Gym is not available to them.

The MHS boys' wrestling team uses the wrestling room, a room with a padded floor and wall-lined mats, for practices.

The MHS boys' football team and boys' and girls' track and field teams use Carper Field for practices and competitions. The MJH boys' and girls' track and field teams also use Carper Field for practices and competitions, and practice after the MHS track and field practice has concluded. Carper Field was rebuilt last year.

The MHS boys' and girls' tennis teams use the Stanfield Memorial Tennis Complex, which was built about eight years ago, for practices and competitions.

The "Kiln" gymnasium serves as the main gymnasium for MJH. It was built in 2020. The MJH boys' and girls' basketball, and girls' volleyball teams use Kiln Gym for practices and competitions. The MJH boys' wrestling team uses the Kiln Gym for competitions.

The Practice Gym serves as the secondary gymnasium for MJH. The Practice Gym is used primarily by the MJH boys' wrestling team for practices. The MJH girls' and boys' basketball teams occasionally use the Practice Gym for practices when the wrestling team is not using it and the Kiln Gym is not available.

Off-campus Facilities

Birchwood Park is a park district facility located approximately four miles, or a seven-minute drive, from the MJH and MHS. The MJH and MHS girls' softball teams use Birchwood Park, Field #1, for practices and competitions. Birchwood Park consists of four softball fields that were rebuilt approximately five years ago. Current amenities include an electronic scoreboard, PA system, a press box, metal bleachers behind home plate and on the first baseline, above-ground dugouts, two outdoor batting cages with nets that were replaced in September 2021, indoor plumbed restrooms, lighting, a concession stand, and storage for equipment and supplies. The park district is currently making the restrooms climate-controlled so that the softball players will no longer need to utilize portable restrooms at the beginning of their season. However, the above-ground dugouts block the site line for spectator viewing when the bleachers are placed behind home plate. To remedy this, the District moved one set of bleachers to the first base line. Bleachers cannot be placed on the third baseline due to the construction and design of the field

making a concrete retaining wall necessary. The design restricts the line of site from the third base line and makes undesirable spectator viewing.

Coaches and players reported raking the dirt and filling in holes as needed at the facility. Additionally, maintenance and safety concerns were reported due to a large number of geese congregating near and on the softball fields, resulting in the fields and facility being covered in goose droppings. The District reported working with the park district recently to remedy this problem by removing the pond near the field where the geese congregated. The Complainant and MHS girls' softball coach reported that the softball field is not regulation size; however, according to the MHS Athletics Director, the field is and always has been regulation size, but the outfield grass was cut to 50 feet from the pitching rubber, instead of 60 feet, so the field did not meet the National Federation of High School's requirement for regulation play. As a result, the District could not host post-season play. The District reported having corrected this in the last one to two months.

Westwood Park is a park district facility located approximately two miles, or a five to seven-minute drive, from MJH and MHS. The MJH and MHS boys' baseball teams use Westwood Park, Field #5 and Field #6, for practices and competitive events. Westwood Park is about 50 years old (renovated in the last 10 years), and consists of approximately six different baseball fields, each of a different size to accommodate the different sizes of fields for different levels of play. Amenities include a electronic scoreboards on both fields, a PA system, lighting, a press box for each field used by the District, two rows of stadium-style seating behind home plate for Field #5, metal bleachers on each baseline, indoor plumbed restrooms, indoor and outdoor batting cages, in-ground dugouts on Field #5, above-ground dugouts on Field #6, and storage for equipment and supplies. Westwood Park includes a concession stand that is run by the park district, which is open during park district events. The Field #5 press box also houses a small concession stand, which the District operates during all of its competitive events. Because the restrooms are not climate controlled, the MHS boys' baseball team utilizes portable restrooms at the beginning of the spring season until it is warm enough for the plumbing to be turned on in the restrooms. Maintenance concerns were noted regarding weeds on both the infields and outfields.

McClallen Park is an approximately fifteen-year-old park district facility that is located approximately 1.5 miles, or a five-minute drive, from MHS. McClallen Park is used by the MHS boys' and girls' soccer teams. McClallen Park consists of multiple grass soccer fields, with one field reserved exclusively for MHS boys' and girls' soccer competitive events. The soccer teams typically practice on the side fields at McClallen Park. Amenities include an electronic scoreboard, irrigation on the primary field, covered player benches, lighting, plumbed indoor restrooms, a PA system, a two-story press box with storage and a referee room on the first floor, permanent metal bleachers, and a grassy area for additional spectator seating. The primary competition field is fully enclosed by a fence. Because the restrooms are not climate controlled, the MHS girls' soccer team utilizes portable restrooms at the beginning of the spring season until it is warm enough for the plumbing to be turned on in the restrooms.

The Kennel Lake Sportsmen's Club is a members-only outdoor facility that includes a lake, picnic areas, campsites, and a disc golf course. The facility has indoor, plumbed restrooms. The MJH and MHS boys' and girls' cross country teams have used Kennel Lake for practices and competitive events since 2020.

The Pine Lakes Golf Course is an 18-hole public golf course located in Washington, Illinois, approximately five miles or a ten-minute drive from MHS. The MHS boys' and girls' golf teams use the Pine Lakes Golf Course for practice and competitive events.

The Lincoln School Gym and the Grundy School Gym are gymnasiums located at elementary schools in the District. The Lincoln and Grundy School gyms are identical in size and design. Both gyms are approximately a five-minute drive from MJH. The MJH boys' and girls' basketball teams and the MJH girls' volleyball team use the Lincoln and Grundy School gyms for practices.

Locker rooms

MHS has three sets of locker rooms: boys' and girls' PE locker rooms, boys' and girls' varsity locker rooms, and two locker rooms at Carper Field. According to the MHS Athletics Director, all students who participate in PE are assigned a locker in the PE locker rooms. Additionally, the District reported that all varsity athletes can receive a locker in the varsity locker rooms during their competitive season. The varsity locker rooms are shared by other sports that are competing during their season with the exception of the boys' football team and the boys' and girls' track and field teams, who use the Carper Field locker rooms. District athletes do not use locker rooms at any off-campus facilities. OCR received varying responses on its survey regarding whether members of the team are assigned lockers, with all athletes that completed the survey from the following teams indicating players on their team are not assigned lockers: boys' baseball, boys' and girls' golf, boys' and girls' soccer, and girls' tennis.

All students at MJH take physical education and are assigned a locker in the newly built Kiln locker rooms. The locker rooms have two sizes of lockers – large and small. In-season student athletes receive large lockers for the duration of their season. When their season is complete, they are assigned a small locker. The PE teachers assign lockers at MJH.

Conclusion and Resolution Agreement

OCR determined that it is appropriate to resolve the complaint allegations because OCR has identified concerns that can be addressed through a resolution agreement.

In particular, OCR has concerns that the District does not effectively accommodate the interests and abilities of members of female students in its interscholastic athletics program, that there is a disparity in the quality and maintenance of the facility that the District provides for the girls' softball team, and that the District's provision of equipment and supplies favors male athletic participants.

OCR has concerns that the District does not effectively accommodate the interests and abilities of members of both sexes in its interscholastic athletics program by providing participation opportunities substantially proportionate to the enrollment rates at Morton High School. The District's female participation rates are significantly lower than the District's female enrollment rates. Despite the disparity in enrollment and participation rates, the District cuts potential girls' athletic participants, and has not recently conducted an interest survey of its high school students to determine whether there is any unmet interest.

OCR additionally has concerns about the District's provision of practice and competitive facilities, specifically as it relates to girls' softball. The District has taken steps over the last few months to remedy some of the concerns identified in the OCR complaint, including replacing the netting in the softball batting cages, working with the park district to install climate-controlled restrooms, changing the outfield grass to allow for post-season play, and removing a pond in which geese congregated resulting in goose droppings on the facilities; however, OCR has concerns that the spectator viewing opportunities remain inferior at the Birchwood Park softball field, as compared to the other District practice and competition facilities, and the facility has fewer amenities as compared to the baseball field.

Finally, OCR has concerns about the District's provision of equipment and supplies favoring the male participants. A review of the documentation provided by the District indicates that the boys' teams are allocated substantially more funds for supplies and equipment both overall and per athletic participant than the girls' teams. Additionally, a disproportionate number of boys' teams appear to have been allocated budgets for uniforms beyond those identified in the District's uniform rotation schedule as compared to girls' teams. Moreover, the District does not appear to monitor the use of Activity Funds to ensure equitable funding amongst its boys' and girls' teams.

The resolution agreement is tied to the allegations and the evidence obtained during the investigation and is 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 District'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.

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 privacy.

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

If you have any questions about this letter, you may contact Mr. Shawn Peters at (312) 730-1508 or Shawn.Peters@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure