



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Sent Via U.S. Mail and Email

Gary Williams, Superintendent
Crossett School District
219 Main Street
Crossett, AR 71635
gary.williams@crossettschools.org

Re: OCR Complaint No. 06131162

Dear Mr. Williams:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint filed against Crossett School District (CSD or District), which alleged the CSD discriminated on the basis of sex. Specifically, the complainant alleged that during the 2011-12 and 2012-13 school years, the girls' athletic teams at Crossett High School (CHS) were treated differently with respect to the use of the District's athletics facilities.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. CSD is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title IX.

During the investigation, OCR reviewed and analyzed relevant information, documents, and data provided by the complainant, the District, and conducted interviews with the complainant, student athletes, and relevant District personnel. OCR also completed an onsite investigation, which included an inspection of the District's athletics facilities, and collecting information from CSD representatives, coaches, and student athletes. Based on our review of this information, OCR identified compliance concerns with Title IX. During the course of the investigation, and prior to OCR's reaching a determination, the District requested to resolve the complaint and noted compliance concerns. On October 27, 2017, the District signed the enclosed Resolution Agreement. Provided below is a summary of OCR's investigation and resolution of the complaint.

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LEGAL STANDARD

The Title IX implementing regulation at 34 C.F.R. § 106.41(a) states, in relevant part, that “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, 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). Specifically, Title IX at 34 C.F.R. § 106.41(c), requires a recipient to provide equal athletic opportunity for members of both sexes at 34 C.F.R. §106.41(c)(7), in the provision of locker rooms, practice and competitive facilities.

To assess a recipient’s compliance with Title IX regarding whether a recipient is providing equal athletic opportunities to members of both sexes, OCR analyzes multiple factors, as set forth in the Title IX regulation and OCR’s case processing procedures. Pursuant to the Title IX regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits, and opportunities. OCR’s investigative approach in evaluating compliance is based on the program components defined in the Title IX regulation. For purposes of OCR’s investigation of this complaint, OCR assessed Title IX compliance with respect to the provision of locker rooms, practice and competitive facilities, 34 C.F.R. §106.41(c)(7), which is the applicable program component for the complaint. During the course of the investigation, OCR identified compliance concerns in three additional program components regarding the provision of equipment and supplies, 34 C.F.R. § 106.41(c)(2), scheduling of games and practice time, 34 C.F.R. § 106.41(c)(3), and medical and training facilities and services, 34 C.F.R. § 106.41(c)(8).

Set forth below is an investigative summary of OCR’s analyses and identified compliance concerns pursuant to Title IX.

INVESTIGATIVE SUMMARY

OCR investigated whether the CSD failed to provide practice and competitive facilities for female athletes equal to those provided to male athletes, as required by the Title IX, at 34 C.F.R. §106.41(c)(7).

The CSD is a small, rural school district located in Crossett, Arkansas serving approximately 1,923 students in grades preschool through 12. The CSD has three campuses, the Crossett Elementary School, Crossett Middle School (CMS), and the CHS. The District’s 2012-13 school enrollment data relevant to the time the complaint was filed reflected 284 males 270 females enrolled at CHS. The CHS interscholastic teams for the high school boys’ and girls’ athletic programs include: boys’ baseball, basketball, football, golf, tennis, and track and field; and girls’ basketball, golf, softball, tennis, and track and field. The CSD competes in the 4A classification administered by the Arkansas Activities Association in the 4A Region 8 Conference.

Title IX, at 34 C.F.R. § 106.41(c)(7) requires recipients to provide equal athletic opportunity for members of both sexes in the provision of locker rooms, practice and competitive facilities. OCR assesses the following six factors 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.

On May 13-15, 2013, OCR conducted an inspection of the CSD's locker rooms, practice and competitive facilities utilized for its athletics program. During this visit, OCR's inspection of the District's athletic facilities included on-campus facilities utilized for the boys' and girls' athletics programs, and off-campus facilities for baseball, softball, and tennis. OCR also completed interviews with relevant administration, coaching staff, and student athletes. The evidence revealed the CSD athletic facilities are located both at the CMS and CHS campuses, and off-campus locations. The District's on-campus sports facilities include: the CHS gym, CMS gym, stadium and track and field facilities, and the John Pierce Field House (Field House), which houses an indoor practice facility, weight room, coaches' offices, film and training room, storage, and locker room facilities. Off-campus facilities include the baseball field, softball field, tennis courts, and golf facilities. The CSD reported to OCR that the baseball and softball field facilities are located off campus across the street at the Crossett City Park. The District reported to OCR that the City of Crossett (City) owns both facilities, and the CSD has leased these facilities from the City since 2008 to provide the District's baseball and softball programs. The CSD clarified to OCR that per the current agreement terms with the City, the District is responsible for the maintenance, upkeep (including any improvements as needed), and utilities for both the baseball and softball facilities. The CSD further reported to OCR that the tennis courts are owned and maintained by the City and the golf facilities are owned and maintained by the Prairie Country Club.

Quality and Availability of the Facilities Provided for Practice and Competitive Events

The evidence revealed the District has no written policy concerning availability and usage of athletic facilities at CSD, and that in practice, the Athletic Director and coaches are responsible for scheduling usage of facilities for practice and competitions each school year. The CSD reported many sports use the same and different facilities depending on their respective seasons and that for sports that share the same facility, in-season sports get priority. The CSD also reported that co-ed sports like golf, tennis, and track and field practice and generally compete together. The CSD further reported that sports that share the CHS and CMS gyms during the same season like boys' and girls' basketball do so by coordinating a schedule that is equitable for practices, and alternating which team is home or away for games (i.e., boys' basketball competes away while girls' basketball competes at home). The CSD indicated that

the athletic secretary keeps calendars of scheduled practice times for indoor facilities to avoid conflicts.

OCR's review of the quality and availability of the CSD practice and competitive events revealed that the football team has exclusive use of its facilities, and boys' and girls' teams for golf, tennis, and track use the same facilities. The boys' baseball and girls' softball fields are located off campus and used exclusively by those teams. OCR found that the girls' basketball is assigned to the CHS gym for practice, while the boys' basketball is assigned to the CMS gym for practice and locker room facilities. This is of concern as the CMS gym is a newer facility (1996) with newer and adequate practice and competitive facilities when compared to the CHS gym (1940s-1950s), which has no air conditioning and is not utilized for competitive events by neither the boys' or girls' basketball teams due to the age and condition of the facilities.

OCR found several deficiencies in its review of the overall quality and availability of the baseball and softball field facilities. OCR's visual inspection found the softball field facilities have covered home and visitor dugouts with metal roofs, surrounded with chain link fencing, and concrete flooring with metal and wooden benches, with limited cubby holes (home side only) and bat storage, with fencing, lighting, an electronic scoreboard, a concession building, spectator restrooms, and spectator seating behind home plate. In comparison, OCR's inspection of the baseball field revealed newly renovated home and away covered and enclosed dugouts made of cinder blocks with concrete flooring, wooden benches, with built-in cubby holes and bat storage for both home and visitors' sides, and protective netting in front of both dugouts. The baseball field also has a protective outfield fence safety topper and windscreen, a protective cage for hitting fly balls to adjacent fields, batting cage, and bullpen for both home and visitors has practice mound. In addition, the baseball field has a two-story building at home plate, with a large press box and PA system on the second floor, and locker room facilities exclusively for the baseball team located on the first floor. OCR further noted the baseball field has a concessions building and barbeque smoker, where concessions are sold and restrooms are available for both players and spectators, and multiple storage areas for equipment and supplies located in a dedicated storage building and in the press box building and locker room facilities.

During the course of the investigation, OCR sought supplemental data from the District to clarify information gathered during OCR's May 13-15, 2013 onsite visit. The CSD submitted supplemental data on November 26, 2013, December 12, 2014, December 17, 2015, and March 22, 2017 concerning its athletic program and facilities, which was reviewed and analyzed by OCR. On December 12, 2014, the CSD notified OCR of changes made to the District's athletic facilities for the 2014-15 school year and provided supplemental data and pictures of these improvements and changes. Of specific note, the District reported new locker room facility assignments for female athletes, providing access to the turf and weight rooms for all athletes, and the purchase of a new batting cage for the softball field facilities. The District clarified to OCR on November 26, 2013 that the District installed new bleachers and fences at the softball field and partially updated the bleachers for the baseball field. The District acknowledged that it has completed limited maintenance and upkeep to the baseball and softball facilities since

leasing the City's facilities. OCR's review and analyses of the data, onsite inspection, and CSD coaching staff and student athlete interviews revealed the following identified concerns with respect to the quality and availability of the softball field facilities: the softball field has uneven surface areas, patches of grass, riddled with crayfish mud mounds and flooding/drainage issues, grass growing in the field and around dugouts, fencing has no outfield windscreen, netting, or protective fencing topper, missing lighting fixtures and/or intermittent inoperable lighting, no operable batting cage, the home side bull pen pitcher warm up area is in poor condition, with 3-4 hitting nets, no bull pen for the visitor's side, no press box or PA system, no storage for equipment and supplies; and the softball field concession building is not utilized by the softball team for competitive events, but rather as storage.

OCR notes the CSD submitted supplemental information for the 2016-17 school year reporting the District recently added new structures to the softball field facilities, which include a concession stand, bathrooms, press box, and dugout with dressing room. The CSD also reported the baseball field facilities have a concession stand, bathrooms, press box, and dressing room. On May 10, 2017, the CSD further informed OCR that beginning the 2016-17 school year, the District's athletic program expanded to include boys' and girls' soccer.

Exclusivity of Use of Facilities Provided for Practice and Competitive Events

The evidence revealed some noted concerns regarding inequitable access to certain indoor practice facilities. Specifically, interviews with student athletes and coaching staff reflected unequal access to the turf room and weight rooms, located in the Field House. Predominantly, the information reported to OCR reflected exclusive use by the football team, with some use by other male sports (i.e., the baseball and boys' track). The majority of other sports and coaching staff reported that the turf room was not available for use by their sport, and was rarely used; if only during inclement weather (i.e. boys' and girls' track teams reported using when raining a few times). Similarly, the softball head coach and athletes also reported no access to the turf room, but noted that because the batting cage at the softball field is inoperable, they are allowed to practice in the turf room to utilize the batting cage. The evidence further revealed the weight room was reportedly used almost exclusively by football, with some reports of boys' basketball and track sometimes utilizing the weight room once a week. Specifically, female athletes reported a lack of access to scheduling for practice time to utilize the turf room and weight room facilities, while male athletes reported regularly scheduled weekly access to both the turf and weight room facilities for practice.

Availability and Quality of Locker Rooms

The CSD reported that locker room facilities are located on campus at the CHS, CMS, the Field House, and off-campus at the baseball field facilities. During interviews, student athletes who were assigned lockers confirmed to OCR that they were assigned lockers for the entire school year and had exclusive use of their assigned lockers. OCR confirmed in interviews with student athletes that athletes participating in the following sports do not receive lockers: girls' and boys' golf and tennis, unless they participated in another sport in which the athletes already have assigned lockers. OCR's review and analyses of the data, onsite inspection, and interviews with student athletes, coaches, and administration revealed concerns regarding the equitable

provision of locker room facilities. The evidence revealed both tennis and golf are coed sports that utilize privately owned off-campus sport facilities, and are not provided locker room facilities by these facilities nor by the District. In addition, OCR found girls' basketball, softball, and track do not have comparable, assigned locker room facilities available to them, whereas baseball, football, and boys' basketball and track do have available locker room facilities that are assigned to their respective teams each year with exclusive use. Specifically, girls' basketball utilizes the CHS gym locker rooms and the boys' basketball utilizes the CMS gym locker rooms.

OCR's review also compared the quality of the locker room facilities for male and female athletes. Generally, OCR found the locker rooms were comparable and were maintained in a comparable manner. However, OCR noted a concern with the quality of the girls' basketball team locker room facilities. The female athletes reported having to utilize the older high school (CHS gym) locker room facilities, while the boys' basketball team utilizes the newer CMS gym locker room facilities, which is located in the CMS gym where both teams also compete. OCR's inspection found the CHS gym girls' basketball locker room facilities were of poor condition, as compared to the boys' basketball locker room facilities. OCR also identified a lack of access to washer and dryer facilities for female sports locker rooms in the Field House, as the only washer and dryer available to teams is located inside the football locker room in the Field House.

Maintenance and Preparation of Practice and Competitive Facilities

OCR's investigation revealed that each head coach is assigned the responsibility for the preparation and maintenance of his or her respective sports facilities for both practice and competitive events. The sports teams reported to OCR that they often assist coaching staff with preparing facilities for use for both practice and competitive events, with the exception of the boys' and girls' golf teams, who utilize facilities that are maintained and prepared by the staff of the privately owned country club where the teams practice and compete. Both coaching staff and sports teams reported overall that practice and competitive facilities are adequately maintained for practice and competition. OCR noted no specific concerns in its review of maintenance and preparation of practice and competitive facilities.

Additional Title IX Compliance Concerns

During the course of OCR's investigative activities, OCR identified additional concerns beyond the scope of OCR's investigation of the provision of locker rooms, practice and competitive facilities. Specifically, OCR noted concerns in the Title IX provision of equipment and supplies, the scheduling of games and practice time, and the provision of medical and training facilities and services. As previously noted above, OCR's investigation found deficiencies concerning the availability of indoor practice facilities for female athletes to access and utilize the turf room and weight room for practice, which also raise overlapping concerns with regard to the scheduling of practice time and the provision of medical and training facilities and services as these components relate to the turf room and weight room facilities. In addition, OCR noted concerns with access to storage for female sports, which is a facility element analyzed under the equipment and supplies component. Specifically, girls' basketball, track, and softball all reported little to no storage space available for storing sports equipment, uniforms, and

supplies, either in locker room facilities, coaches' offices, or at the actual sport facility (i.e., softball), as compared to the boys' sports, as assigned by the District.

CONCLUSION

Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint and outstanding compliance concerns through OCR's resolution process via a voluntary Resolution Agreement (Agreement). Section 302 of OCR's Case Processing Manual (CPM)¹ provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the allegations. Pursuant to Section 302, the provisions of a resulting voluntary Agreement must be aligned with the complaint allegations or the information obtained during the investigation, and must be consistent with applicable regulations.

Accordingly, on October 27, 2017 the District voluntarily submitted the enclosed Agreement to resolve this complaint and noted compliance concerns. OCR has determined that the provisions of the Agreement are aligned with the complaint allegations and information obtained during the investigation, and that the Agreement fully resolves the complaint in compliance with applicable regulations. Further, OCR accepts the Agreement as an assurance the CSD will fulfill its obligations under Title IX with respect to this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. Therefore, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. However, OCR will actively monitor the District's implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

As of the date of this letter, OCR is closing the investigative phase of this case and opening the monitoring phase to ensure that the District fully implements the provisions of the Agreement. The complainant is being notified concurrently.

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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the CSD 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, that individual may file another complaint alleging such treatment.

¹ The CPM is available at the OCR website: www.ed.gov/ocr.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it 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.

We appreciate the cooperation extended to OCR by you and your staff to successfully resolve the complaint. If you have any questions about this matter, please contact Dana K. McKenna, Senior Investigator, at 214-661-9639 or via email at dana.mckenna@ed.gov, or Terri Gonzales, Supervisory Attorney/Team Leader, at 214-661-9687 or via email at terri.gonzales@ed.gov. We look forward to working with the District in implementing the Agreement to completion.

Sincerely,

Taylor D. August, Regional Director
OCR Dallas Office

Enclosure