



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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Dr. Jacquelyn C. Thigpen, Superintendent
Cleveland School District
305 Merritt Drive
Cleveland, Mississippi 38732

OCR Complaint Ref. 06131731

Dear Dr. Thigpen:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Cleveland School District (CSD or District), Cleveland, Mississippi. The complainant alleged the CSD discriminates against female students at Cleveland High School (CHS) and East Side High School (ESHS) on the basis of sex in the provision of various athletic opportunities.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. OCR has determined that the District is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to process this complaint for resolution under Title IX.

Please be advised that a finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence, (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred. When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

OCR's investigation of this complaint included review and analysis of information provided by the complainant and the District. In addition, OCR conducted an on-site visit April 8-9, 2014, and gathered information through interviews with ESHS and CHS administrators and students.

Based on this information, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with Title IX regarding the components involving opportunity to receive equivalent scheduling of games and practice time (Issue 1), equivalent coaching and assignment and compensation of coaches (Issue 2), and the provision of equivalent locker rooms, practice and competitive facilities (Issue 3). The bases for the determinations are summarized below.

Legal Standard

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states, in relevant part, that “[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.” The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), states in pertinent part: “A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal opportunity for members of both sexes.” Further clarification of the Title IX implementing regulations is provided in the Intercollegiate Athletics Policy Interpretation (Policy Interpretation) issued December 11, 1979 [44 Fed. Reg. 71413 et seq. (1979)]. Both the Title IX implementing regulations and the Policy Interpretation list factors that OCR may investigate in assessing a recipient’s compliance with Title IX.

The Title IX implementing regulation, 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)(2) in the scheduling of games and practice time; at 34 C.F.R. § 106.41(c)(5), in the opportunity to receive coaching and academic tutoring; at 34 C.F.R. § 106.41(c)(6).

When investigating athletics program components, OCR examines whether the availability and quality of benefits, opportunities, and treatment provided are equivalent (equal or equal in effect) for members of both sexes. OCR determines whether any disparities are the result of nondiscriminatory factors or whether these disparities resulted in the denial of equal opportunity to male or female athletes, either because the disparities collectively are of a substantial or unjustified nature, or because the disparities in individual program areas are substantial enough by themselves to deny equality of athletic opportunity. OCR analyzed each relevant program component below.

Issue 1

Whether the CSD discriminates against female CHS student athletes on the basis of sex by failing to provide them equal athletic opportunity with respect to the scheduling of games and practice time, in violation of 34 C.F.R. § 106.41(c)(3).

Scheduling of Games and Practice Time

The Policy Interpretation lists five factors to be assessed in determining compliance with the scheduling of games and practice time component: (1) number of competitive events per sport;

(2) number and length of practice opportunities; (3) time of day competitive events are scheduled; (4) time of day practice opportunities are scheduled; and (5) opportunities to engage in available pre-season and post-season competition. The season of sport and the length of season may also be a factor to be assessed depending upon the specific fact situation.

Findings of Fact

OCR confirmed the practice times during interviews with student athletes and the Athletic Director, principal and assistant athletic director. In addition, the District and Athletic Director and students informed OCR that the following sports have an athletic period during the 7th period of school day: boys' basketball, boys' baseball and football. No girls were provided an athletic period.

None of the female or male athletes expressed concern regarding their sport's season. All of the student athletes indicated there was sufficient opportunity for spectators to attend their events. However, the boys' track and cross-country teams noted that their competitions occur during the day, which makes it difficult for working parents to attend.

OCR interviewed the CHS principal and Athletic Director about the decision to not provide an athletic period to girls' teams. The Athletic Director told OCR that it was an "academic" period and the decision was made by the principal. The principal told OCR that according to the Mississippi Department of Education, only teachers with a PE certification can have an athletic period. Because of this, and because some CHS coaches are on staff at other CSD campuses, they could not schedule athletic periods for the girls' teams.

Nearly all of the sports teams practiced after school for a similar amount of time. The provision of an athletic period for three boys' teams, however, provides an all-year benefit to the boys' athletic program, especially considering how many of the male athletes participate in multiple sports. During interviews with OCR, the female athletes articulately explained that the boys' teams with an athletic period receive an extra hour of practice time throughout the year, which "adds up." Due to state athletic association rules, the girls' teams may not begin practice until two weeks before the first game. Girls also stated that the athletic period held at the end of the day would allow them not to skip academic classes when they have to leave school early to travel to away games and would give them time to prepare their fields, a benefit that the boys' teams described to OCR. Boys reported to OCR that they used the athletic period for strength and conditioning year-round, to review tape and games, to prepare facilities and practice.

Legal Analysis

OCR reviewed the five elements of this component to determine whether any differences constitute a disparity. With regard to the number of competitive events per sport, OCR found that male and female athletes were provided comparable opportunities to participate. The softball team had ten fewer games than the baseball team; however the softball team had three tournaments and the boys' baseball team had none.

OCR next reviewed the opportunities to engage in pre- and post-season competition. The coaches and athletes informed OCR that for all teams post-season competition is by qualification. Thus, each team's participation in post-season competition was dependent on their qualification and advancement.

OCR's analysis revealed that there is a difference between the boys' and girls' teams with regard to the scheduling of competitions and practices, in that many boys are provided a year-round athletic period but no girls are provided this. Interviews with students showed that this was a decided benefit granted to the boys' teams, both from an athletic and academic perspective. OCR found that the differences resulted in a significant disparity, and thus found by a preponderance of the evidence that female athletes were denied equal opportunity to participate with regard to the scheduling of games and practice time.

Issue 2

Whether the CSD discriminates against female CHS student athletes on the basis of sex by failing to provide them equal athletic opportunity with respect to the opportunity to receive coaching and assignment and compensation of coaches, in violation of 34 C.F.R. § 106.41(c)(5) and (6).

Opportunity to Receive Coaching and Assignment and Compensation of Coaches

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

Findings of Fact

Availability

OCR first determined the ratio of the total number of coaches to the total number of participants for each program and compared the ratios. In comparing the ratios, OCR did not consider combined sports, as both male and female athletes were provided the same number of coaches. When comparing the boys' teams and the girls' teams, overall the girls' teams had a lower student-coach ratio, except for the girls' cross-country team, which had a student-coach ratio of 1:24. Boys' teams had more assistants than girls' teams. The varsity football team had more assistant coaches than any other sport (4 assistant coaches); however, the football team had the

most athletes. Female athletes at CHS reported that the softball, volleyball and girls' soccer teams all had unpaid assistant coaches, which indicated a need for additional coaching for these teams.

Assignment

Due to the CSD's refusal to provide OCR with contact information to conduct a survey of the coaches, OCR was unable to assess the training, experience, and other professional qualifications of the coaches assigned to the boys' program with coaches assigned to the girls' program at the time of their hiring for their coaching positions. OCR reviewed coaches' employment contracts and found the language identical.

During OCR's interviews with CHS athletes, there were no concerns or problems noted about the training, experience and other professional qualifications of the CHS coaching staff. The complainant did not make specific allegations that CHS coaches of female sports were unqualified.

Compensation

OCR next examined the stipends paid to coaches in each sport. OCR found that the Head Girls' Basketball Coach and the Head Boys' Basketball Coach were paid the same stipend (\$4,000) for their head coaching duties. OCR found the Athletic Director also received supplements for assuming the position of head baseball coach (\$3000), head Girls' soccer coach (\$2,000) and head Boys' Soccer Coach (\$2,000). The Boys' Head Baseball coach was paid more (\$3000) than the Girls' Head Softball coach (\$2,500). The same person received the same stipend for being the Head Girls' Track Coach and the Head Boys' Track Coach (\$2,000 each). The Head Volleyball Coach was paid more (\$2000) than the Boys' Head Powelifting Coach (\$1200).

The football coaches received the majority of coaching supplements. The Football Head Coach received \$11,092 for this assignment. The CSD asserted to OCR that this figure was due to an extension of the number of work days, however, this was not in the contract that was provided to OCR, which was identical to every coach's contract with regard to length.

OCR next examined the assistant coaches for each sport. With the exception of the football assistant coaches, all of the assistant coaches were provided the same stipend for the equivalent sport. For example, the baseball assistant coach and the softball assistant coach were paid the same stipend and the girls' basketball assistant coach and the boys' basketball assistant coach were paid the same.

The total budget for coaching stipends during the 2013-2014 school year was \$58,792. Coaching stipends for boys' sports represented 68.5% of the total amount for coaching stipends; while coaching stipends for girls' sports represented 31.5% of the total amount. As noted earlier, the number of female athletic opportunities at CHS was 99, which represents 38% of the total, while the number of male athletic opportunities at CHS was 162, which represents 62% of the total. The proportion of coaching funds available to girls' sports was not equivalent to the proportion

of female participants, the proportion of the coaching funds to boys' sports was higher to the proportion of male participants.

The complainant also specifically alleged that male coaches were routinely granted additional supplemental income, through extended days on their contract, bus driving stipends and athletic administrative positions. OCR's review of the supplemental stipends substantiated this allegation. Boys' coaches received multiple such opportunities for extra stipends. As noted above, the District asserted to OCR that the head football coach's stipend of \$11,092 was "extended to 234 days, adding 47 days at 236 per day" though this extension of days was not specified in his contract. Additionally, the head football coach received an \$1800 stipend for "field maintenance" and an \$1800 stipend for serving as "strength coach" during the summer. Another assistant football coach also received an \$1800 stipend to serve as "strength coach" during the school year. The Athletic director received a \$6805.60 stipend for duties listed as "bus driver-part time."

The CHS principal told OCR that any coach interested in driving a bus route must have a Commercial Driver's License (CDL) and must apply through the transportation department. The CHS Athletic Director told OCR all coaches were strongly encouraged to get a CDL but there were no extra stipends for driving buses. The Athletic Director also told OCR that the strength coaches worked with all students, male and female.

Legal Analysis

OCR's analysis revealed that there were some differences between the boys' and girls' teams with regard to availability of coaches and compensation of coaches.

With regard to availability of coaches, overall the total ratios of students to coaches were the same. However, upon closer review, the girls' teams had fewer assistant coaches and were coached by more volunteer and non-professional coaches. Further, the girls' soccer head coach, who did not have an assistant coach for the girls, is also the boys' soccer head coach. The same person was also the head coach for both the boys' cross-country team and the girls' cross-country team, which had the highest student to coach ratio of all the CHS athletics teams.

With regard to compensation of coaches, OCR found that the difference in coaching and additional duty stipends for boys' coaches, and the extended days and duties for boys' coaches resulted in a significant disparity that resulted in inequities between male and female athletic programs. The extra stipends for strength training coaches and field maintenance benefitted the boys' teams disproportionately. Although the AD asserted that the strength coaches worked with both boys' and girls' teams, OCR determined that the strength coaches primarily worked with the football team, during their summer workouts and during their athletic period, which no girls' teams had. Therefore these extra stipends pushed the compensation totals further apart, to the point where boys' coaches earn 71% of the available coaching stipends, for 62% of the athletic opportunities.

With regard to the availability of coaches, OCR determined that there was no difference in the procedure used for assignment of coaches to teams or the responsibilities assigned to coaches of teams based on the sex of the teams. There was an insignificant difference in the ratio of coaches

to athletes for males (1:11.6) and for females (1:11) favoring the male athletic teams. There was no information to indicate that this difference served to deny equal athletic opportunity to male athletes. OCR also identified differences in the number of assistant and unpaid coaches for girls but had no information that this difference served to deny equal opportunity for female athletes.

OCR determined that there was no concern about training, experience or professional standing of coaches from the students or the complainant. While CSD did not make its coaches available for a survey, OCR interviewed the CHS students who raised no concern about the quality of the coaching they received. Therefore, there was insufficient evidence that the CSD routinely assigns coaches with less experience to the girls' athletic program.

With regard to the compensation of coaches, OCR determined that coaches for the sport of football received greater stipends than coaches for any other sport, male or female. OCR determined that the increased amount of funding allocated to the boys' football team in the form of coaching stipends is a nondiscriminatory difference based on the nature of the sport and its demands, which are not as time-consuming for other sports. OCR found there was a difference in the proportions of coaching funds going to the boys' and girls' teams; boys' teams received 68.5% of the coaching stipends for their 62% of the athletic opportunities. OCR then analyzed the additional stipends that football coaches received, for field maintenance, strength coaching and extra days. No other team received these stipends. This, given the fact that the girls' teams had unpaid, volunteer coaches, and the additional stipends to football coaches resulted in additional strength training and field maintenance not provided to girls' teams, OCR concluded that coaching stipends were disproportionately beneficial to the boys' programs, creating a significant disparity.

Overall, OCR determined that the evidence is sufficient to support a conclusion of noncompliance with Title IX. Equivalent benefits, treatment and services are not being provided to male and female athletes in the opportunity to receive coaching and the assignment and compensation of coaches.

Issue 3

Whether the CSD discriminates against female ESHS student athletes on the basis of sex by failing to provide them equal athletic opportunity with respect to the provision of locker rooms, practice and competitive facilities, in violation of 34 C.F.R. § 106.41(c)(7).

Failure to Provide Locker Rooms, Practice and Competitive Facilities for Girls' Teams Equal to those Provided to Boys' Teams

The Policy Interpretation lists six factors to be assessed in determining compliance with the provision of locker rooms, practice, and competitive facilities component: (1) quality and availability of the facilities provided for practice and competitive events; (2) exclusivity of use of facilities 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.

Findings of Fact

The CSD identified the locker rooms and practice and competitive facilities used by each team at ESHS, which OCR examined during its on-site visit.

According to the ESHS Athletic Director (AD), only baseball, football and girls' and boys' basketball are assigned lockers.

During interviews, girls' basketball athletes stated that they were assigned lockers for the season only. The boys' basketball athletes stated that they were assigned lockers but they did not keep their items in the locker room because they shared it with PE. The principal also said that the lockers were for basketball use but he did not believe they were assigned. The assistant athletic director said that lockers were assigned to individuals upon request, and then it was for the entire season. Football athletes stated that they were assigned lockers for the season in the field house (or 'Hut'). Baseball athletes told OCR that they did not receive locker assignments. The baseball coach said they received lockers for the season in the visitor locker room of the field house if it is requested. The principal said the baseball team dressed in the science building bathrooms.

OCR confirmed in interviews with student athletes that athletes participating in the following sports do not receive lockers: girls' and boys' cross-country, girls' and boys' tennis, boys' and girls' swimming, boys' and girls' track, softball and boys' and girls' powerlifting. These teams stated that they dressed out in restrooms either on campus or at the various facilities at which they practice and compete.

OCR found the quality of the locker rooms, cleanliness, number and quality of showers and restrooms to be below average.

OCR compared the quality of the available locker room facilities for male and female athletes. Generally, OCR found the locker rooms were comparable and were maintained in a comparable manner. All athletes who were provided a locker had exclusive use of the locker for the duration of the season. While the football lockers were larger than the lockers for other sports, OCR notes that football requires more and larger equipment than do other sports.

OCR also inspected the practice and competitive facilities during an onsite visit to ESHS. Both girls' and boys' teams practice and compete in the gymnasium facilities. The boys' and girls' basketball teams, drill team, and physical education classes use the main gym, which was built in 1956. OCR found the quality of the main gym to be below average. The seating capacity for the main gym is 660 permanent seats on each side and the size of the gymnasium is standard. The main gym had 2 basketball hoops, one of which was adjustable. There was a main stage, 2 scoreboards and a remote unit to operate the scoreboard.

OCR next examined the baseball field, which is also used by the football team for practice. OCR found the quality to be average and noted the field had two bleachers, a home and away dugout, lights, batting cage, a press box and a "multi-use pavilion."

The football stadium, adjacent to the main building, is also a track field. There are lights, a scoreboard, public restrooms, a school concession stand and a separate building for booster concessions, and a ticket booth.

All remaining teams use Cleveland city parks for practice and competition. OCR examined these facilities as well. OCR reviewed East Side Park, which is used by the softball team for practices. OCR found the quality of the facility to be average. OCR reviewed Amzie Moore Park, also used by the softball team for games and occasional practice. OCR found the quality of Amzie Moore Park to be good. OCR reviewed Fireman's Park, which is only used based on need, not for regular practice. Finally, OCR also reviewed Bear Pen Park, the site of the softball games. Here, OCR found the condition to be good to excellent.

OCR found that there were some differences between the locker rooms and practice and competitive facilities used by male and female CSD athletes. Only one girls' sport practices and competes on site, whereas all of the boys' teams practice on site and three compete on site. Similarly, only one girls' team is assigned a locker room on campus. OCR also noted that some of the differences, specifically with respect to the size of the locker room facilities for football players, are a result of the unique nature of the sport of football, which requires more and larger equipment than is required by other sports.

Legal Analysis

Quality, Exclusivity and Availability of Locker Rooms: OCR's investigation of the quality of the locker room facilities revealed that there was no difference in the quality of the locker rooms provided to male athletes as compared to the quality of the locker rooms provided to female athletes. While the locker rooms in the Field House were larger and had more amenities, the football and baseball teams using them have more players and more equipment than the basketball teams using the gym locker rooms. OCR's interviews revealed complaints among all athletes, male and female, about the quality and cleanliness of the locker rooms. OCR determined that there is no difference in the quality of locker rooms. There is, however, a difference in availability and exclusivity in locker rooms between the female athletes and male athletes, in that far more male athletes (primarily on baseball and football teams) are able to receive lockers and dress in a private setting. The majority of female athletes dress in bathrooms on campus or at city parks.

Quality, Maintenance and Preparation of Competitive Facilities:

As noted above, only one of the female athletic teams (basketball) both practices and competes at ESHS. Girls' track and cross-country practice at ESHS and compete elsewhere and the softball team practices and competes at various city parks. All of the boys' teams practice at ESHS and of those, only track and cross-country compete elsewhere. This is a difference that gives an advantage to male athletes.

However, OCR determined that overall, the quality, maintenance and preparation of the city park facilities was greater than the ESHS home facilities. Interviews with male and female athletes indicate that students and coaches must put more work into preparing the ESHS facilities, which

are old and in disrepair. The facilities at Bear Pen Park, where the softball team competes, are superior to the boys' baseball field on campus. This is a difference that gives an advantage to female athletes.

Summary and Determination

While overall, OCR concluded that CSD is providing substantially equivalent treatment with regard to the quality of practice and competitive facilities for male and female athletes at ESHS, OCR determined that the CSD is not providing substantially equivalent treatment with regard to quality and availability of locker rooms to male and female athletes. As noted above, only one girls' team (basketball) is assigned lockers, as opposed to three boys' teams (football, basketball, and baseball). This disparity is so substantial as to deny equal opportunity to female students. Therefore, OCR determined that the evidence is sufficient to support a conclusion of a violation of Title IX with respect to this issue.

Conclusion

In summary, OCR determined that there is sufficient evidence to support a conclusion of a violation of Title IX with regard to Issues 1, 2, and 3. OCR determined that the CSD did not provide equivalent opportunities in the provision of practice times, availability and assignment of coaching, and the provision of locker rooms, practice and competitive facilities.

During the course of the investigation, the District informed OCR that it would be consolidating all high school students to CHS and using the ESHS campus as a middle school. Since the issue that concerned ESHS regarded its facilities and high school athletics programs, OCR determined that Issue #3 was moot.

Therefore, on April 19, 2017, the District submitted a signed resolution agreement to address Issue #1 and Issue #2. OCR has determined that this agreement, upon full implementation, will satisfactorily resolve the compliance concerns. OCR will monitor the District's progress in the implementation of the agreement. Failure to implement the agreement will result in OCR immediately resuming its investigation.

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 of 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 file a private suit in federal court whether or not OCR finds a violation.

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, 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.

If you have any questions regarding this letter, please contact Sara Koehn, the attorney assigned to investigate your complaint, at (214) 661-9629 or sara.koehn@ed.gov.

Sincerely,

Taylor D. August
Director, Dallas Office
Office for Civil Rights