



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

Mr. Bobby Easterling, Superintendent  
Jim Ned Consolidated Independent School District  
Jim Ned Admin Bldg., 9th and Garza  
Tuscola, TX 79562

RE: OCR Case No. 06141331  
Jim Ned Consolidated Independent School District

Dear Mr. Easterling:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which was received on April 6, 2014. The complainant alleged that the Jim Ned Consolidated Independent School District (JNCISD), in Tuscola, Texas, discriminated against female athletes at Jim Ned High School (JNHS) by discouraging them from participating in multiple sports (*e.g.*, by requiring female students who participate in both basketball and volleyball to (1) practice basketball four days a week during athletic period during volleyball season; and (2) participate in track four days a week rather than the off-season volleyball program in the Spring Semester; and by allowing the girls' basketball coach to order girl volleyball players out of the gym during time designated for students to practice any sport). The complainant alleged that male students are treated differently by JNHS in that they are not required to focus their athletic period practice time to an off-season sport over an in-season sport.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to this Department are in compliance with 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. The JNCISD is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to investigate this complaint under Title IX.

The Title IX implementing regulation contains specific provisions for athletics programs at 34 C.F.R. § 106.41, and indicates that a recipient that operates or sponsors interscholastic, club or intramural athletics shall provide equivalent athletic opportunity for members of both sexes. Further clarification of the Title IX regulatory requirements is provided in the Intercollegiate Athletics Policy Interpretation (Policy Interpretation) issued December 11, 1979 [44 Fed. Reg. 71413, *et seq.* (1979)]. Although designed specifically for intercollegiate athletics, most of the principles in the Policy Interpretation are also applicable to interscholastic athletics programs, which are also covered by the Title IX regulation. In investigating allegations of discrimination on the basis of sex in interscholastic programs, OCR determines which "program component" of

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the Title IX regulations addresses the allegation and reviews all aspects of the program component, not just those aspects identified in the complaint allegations. Determinations for each component are based on comparisons of the overall athletics programs for boys and girls (*i.e.*, all boys' teams compared to all girls' teams), not sport-to-sport comparisons.

By letter dated May 21, 2014, OCR notified the complainant and the JNCISD that it was opening for investigation the following issue:

Whether the JNCISD failed to provide equivalent scheduling of games and practice times to male and female athletes at JNHS during the 2013-2014 school year, in violation of Title IX, at 34 C.F.R. § 106.41.

In order to reach a determination with regard to the issue in this complaint, OCR gathered and analyzed information and documentation provided by the complainant and the JNCISD. This information included game and practice schedules and team rosters for the 2013-2014 and 2014-2015 school years. Additionally, OCR obtained information during interviews with the complainant, JNCISD officials and staff, and JNCISD students. With respect to the issue investigated, OCR has determined that there is sufficient evidence to support a conclusion of noncompliance with Title IX. Provided below is an explanation of how OCR reached this determination.

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.

With regard to the program component of scheduling of games and practice times, OCR assesses five (5) factors:

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 JNCISD reported that the head coach of each sport schedules practices and games in accordance with the University Interscholastic League (UIL) rules.

***A. Number of Competitive Events per Sport, Time of Day Competitive Events are Scheduled, and Opportunity to Engage in Pre-Season and Post-Season Competition***

The JNCISD provided OCR the following competitive schedule of JNHS athletes for the 2013-2014 school year. For each sport, advancement to post-season competition (*e.g.*, Area, Regional,

State) was based on qualification by the team’s season record or performance at the district competition.

<b>Sport<sup>1</sup></b>	<b>Girls</b>	<b>Boys</b>
Basketball (Fall/Spring)	19 regular + 2 scrimmages + 2 tournaments; advanced to Area competition and Regional finals (23)	18 regular + 1 scrimmage + 3 tournaments; advanced to Area competition (24)
Football (Fall)	Not Applicable (NA)	6 regular + 6 pre-season (12)
Volleyball (Fall)	18 regular + 2 pre-season + 3 tournaments (23)	NA
Softball/Baseball (Spring)	16 regular + 2 preseason+ 2 tournaments (20)	17 regular + 3 pre-season + 2 tournaments; advanced to the Bi-District round (22)
Cross Country (Fall)	8 regular meets; advanced to Regional and State meets (8)	7 regular meets; advanced to Regional meet (7)
Track and Field (Spring)	4 regular meets; several students advanced to Regional meet (4)	6 regular meets; several students advanced to Regional meet, one advanced to State meet (6)
Golf (Spring)	7 regular tournaments; team advanced to Regional and State tournaments (7)	6 regular tournaments; one student advanced to Regional tournament (6)
Tennis (Spring)	7 regular tournaments	7 regular tournaments; one student advanced to State finals
Powerlifting (Spring)	NA <sup>2</sup>	5 regular meets; advanced to Regional

OCR noted that the competition schedules for the athletic teams were similar for boys and girls. Also, coaches and student athletes on all of the above-referenced teams indicated that the number of regular season games was adequate for the teams’ division level. Coaches further informed OCR that they played the “standard” UIL schedule and/or that they competed in the maximum number of events allowed by UIL for their sports. Furthermore, information received from the JNCISD, coaches, and athletes indicated that there are sufficient and comparable opportunities for boys’ and girls’ teams to engage in available pre-season and post-season competition, and no student or team was denied the opportunity to compete in post-season events for which they qualified.

According to JNHS coaches, athletes, and written schedules, competitive events were held at the following days and times during the 2013–2014 school year:

<sup>1</sup> All charts in this letter reflect the varsity teams’ game and practice schedules.

<sup>2</sup> Although powerlifting is offered to girls at JNHS, and girls have participated in previous years, there were no female participants during the 2013-2014 school year. However, schedules for the 2012-2013 school year indicate that girls competed in four meets, and boys competed in five meets. Additionally, one girl and two boys qualified and competed in post-season regional meets during the 2012-2013 school year.

<b>Sport</b>	<b>Girls</b>	<b>Boys</b>
Basketball	T,F: 6:30 pm	T,F: 8:00 pm
Football	NA	F: 7:30 pm
Volleyball	T or F: 4:00, 5:00, or 6:00 pm; S: 11:00 am or 12:00 pm	NA
Softball/Baseball	T, F: 2:00, 4:00, 5:00, or 6:00 pm; S: 12:00 pm	T, F: 12:00, 4:00, or 7:00 pm; S: 11:00 am or 12:00 pm
Cross Country	Varies: after school	Varies: 4:00 – 6:30 pm
Track and Field <sup>3</sup>	Th, F: after school, S: all day	Th, F: after school, S: all day
Golf	Varies: 9:00 am – 1:00 pm	Varies: 9:00 am – 3:00 pm
Tennis (combined team)	1 day per week, 8:00 am – 5:00 pm	1 day per week, 8:00 am – 5:00 pm
Powerlifting	NA	Th, F: after school, S: varies

OCR noted that similar sports for boys and girls generally competed on the same days (*e.g.*, girls’ and boys’ basketball teams compete on Tuesday and Friday; softball and baseball compete on Tuesday on Friday). Additionally, both female and male athletes and coaches informed OCR that they played during “prime time” for their sports, and they did not have concerns regarding the time of day competitive events were scheduled. Although some sports had school-day events, coaches and athletes stated that such occurrences were based on availability of competition and were limited by UIL rules.

Based on the information reviewed, OCR found no significant differences between athletic opportunities provided to male and female student athletes with respect to the above three factors.

***B. Number and Length of Practice Opportunities and Time of Day of Practice Opportunities are Scheduled***

OCR next looked at the number and length of practice opportunities and the time of day practice opportunities are scheduled at JNHS. Based on interviews with JNHS coaches and athletes and a review of written practice schedules, OCR determined that practices were held at the following days and times during the 2013–2014 school year:

<b>Sport</b>	<b>Girls</b>	<b>Boys</b>
Basketball (Fall/Spring)	M-F: 2:47-4:20/5:20 pm = 7.5 to 12.5 hours	M-F: 11:55-12:40 pm and 3:45-5:30 pm = 12.5 hours
Football (Fall)	NA	M-F: 11:55-12:40 pm and 4:00-6:00 pm = 12.5 hours

<sup>3</sup> During the 2013-2014 school year, all girls’ track meets or relays were held at the same time and location as boys’ track meets or relays.

<b>Sport</b>	<b>Girls</b>	<b>Boys</b>
Volleyball (Fall)	M-F, 3:00-5:00 pm = 10 hours	NA
Softball/Baseball (Spring)	M, Th: 2:47-5:15/5:20 pm; W: 2:47-4:30/4:45 pm = 6.75 to 7.0 hours	M-F, 4:00-5:45 pm, except for game days (T,F) = 5.25 (if games on both T and F) to 8.75 hours (if no games on T or F)
Cross Country (Fall)	M: 3:30-4:30 pm (weights/boot camp), T-Th: 6:45-7:30 am = 3.25 hours	M-F, 7:00-7:45 am = 3.75 hours
Track and Field (Spring)	M-F, 3:00-5:00 pm = 10 hours	M-F, 3:30-5:30 pm = 10 hours
Golf (Spring)	4 days per week, 3:45-5:45pm = 8 hours	4 days per week, 4:00-6:00 pm = 8 hours
Tennis <sup>4</sup> (Spring)	M,W until basketball is over, M-Th after basketball is over; 3:30-5:00pm = 6.0 hours	M,W until basketball is over, M-Th after basketball is over; 3:30-5:00 pm = 6.0 hours
Powerlifting (Spring)	NA	M-Th: 7-8 am = 4 hours

The practice schedules above reveal that some sport programs are practiced during the school day in a physical education (PE)/athletics class period and before or after school<sup>5</sup> (volleyball, basketball, football, softball, girls' track and field), while some sport programs are only practiced outside of regular school hours (baseball, cross country, boys' track and field, golf, tennis, and powerlifting).<sup>6</sup> OCR noted that boys and girls had equal time for practice in track and field, golf, and tennis. The girls' cross country team practiced for .5 hours less than the boys' team per week. The practice schedule for the girls' basketball program indicated that practice ended at various times each day, with the upper range of practice time equaling the practice time reported by the boys' basketball team. During OCR interviews, the girl cross country and basketball athletes informed OCR that their practice times were sufficient. Additionally, the softball and baseball teams reported ranges of practice times that OCR determined were comparable.

Despite general comparability in number, length, and time of scheduling for most of the boys and girls sports, OCR did find that there was a significant conflict in the scheduling of practice times for female athletes who participated in both volleyball and basketball ("female dual-sport athletes"). Specifically, information received from the complainant and the JNCISD indicated that the volleyball and basketball teams practiced at the same time during the in-school PE/athletics class period during the fall semester. Consequently, female dual-sport athletes were required, without choice, to exclusively participate in basketball practice during the class period

<sup>4</sup> Both boys and girls participating in tennis indicated that practices are not mandatory, and students practice when they can.

<sup>5</sup> Practice times before and after school are scheduled only during a sport's competitive season per UIL rules.

<sup>6</sup> During the 2013-2014 school year, the girls' PE/athletics class period was 7th period (2:47 pm – 3:47 pm), and the boys' PE/athletics class period was 5th period (11:56 am – 12:56 pm).

three out of five practice days a week. This basketball practice requirement was in effect despite volleyball being the in-season sport and basketball being in the pre-season stage. Because of this requirement, female dual-sport athletes were able to practice only twice a week during the class period (game day [Tuesday] and Friday) in addition to practicing with the volleyball team after school each weekday. Girls who participated only on the volleyball team, but not the basketball team, and vice-versa, were not subjected to any reduced practice times in their chosen sport, so they were allowed to practice either volleyball, or basketball, the entire week during the class period in the fall semester.

Both the complainant and the JNCISD informed OCR that no other in-season team, female or male, that meets during the PE/athletic class period requires dual-sport athletes to participate in an off-season sport instead of the in-season sport during the class period. By comparison, boys who play both basketball and football<sup>7</sup> (“male dual-sport athletes”) are not required to practice basketball during the athletic class period while football is the in-season sport. Instead, male dual-sport athletes are allowed to dedicate their practice time to football during the PE/athletics period until the football season is over, and then they transition into basketball practice during the PE/athletics class period. Therefore, the male dual-sport athletes are able to focus their athletic class period practice time on the in-season sport, but female dual-sport athletes are not provided the same opportunity because they are required to split their athletic class period practice time between an in-season sport (volleyball) and an off-season sport (basketball).

The JNCISD noted that it only began the volleyball program in the 2012-2013 school year<sup>8</sup> in response to a previous OCR complaint and acknowledged that “...there have been some trials and errors;” however, the JNCISD states that it is continuing to make adjustments to “give all athletes the chance to be successful in multiple sports.” The JNHS XXXX XXXX informed OCR that the scheduling of practice time for female dual-sport athletes was modeled after other schools with volleyball and basketball teams that have successful girls’ athletics programs. However, in OCR interviews, the volleyball athletes noted that students at other school districts against whom they played told them that their schools do not schedule volleyball practice time in a similar way.<sup>9</sup> The volleyball athletes stated that they believed the conflict existed because JNHS is a “basketball school,” and there is a fear that the girls’ basketball program, which has been very successful, will be weakened by the existence of the volleyball team.

After reviewing all the relevant data, OCR determined that the requirement that female dual-sport athletes, but not male dual-sport athletes, divide their PE/athletics class period practice time

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<sup>7</sup> The football season is similar to the volleyball season. For example, during the 2013-2014 school year, the volleyball team competed from August 9, 2013, to October 26, 2013. The football team competed from August 16, 2013, through November 8, 2013. The first girls’ basketball game (a scrimmage) was on October 26, 2013, and the first boys’ basketball game (a scrimmage) was on November 7, 2013.

<sup>8</sup> The JNCISD started the volleyball program at the junior high level during the 2012-2013 school year, and it expanded the program to the high school, with only a junior varsity team, during the 2013-2014 school year. The 2014-2015 school year is the first year of varsity competition for the JNHS volleyball program.

<sup>9</sup> Some coaches, including XXXX coach, noted that they were aware of other schools with a similar conflicting volleyball/girls’ basketball practice schedule.

between an in-season and off-season sport (volleyball and basketball), constitutes a disparity favoring male athletes with regard to the scheduling of practice time. This scheduling disparity is significant because it forces females to practice one sport (basketball), during the athletics period, at the expense of another sport (volleyball) while the volleyball team is playing games that are crucial to a successful season and a potential post-season, and before the basketball season has begun. In addition, this scheduling disparity may discourage participation by females in these two sports by imposing a practice requirement not imposed on any male sport. Unlike the female dual-sport athletes, the males are allowed to dedicate their PE/athletics period practice time to their chosen sport until the season is over, unless the seasons directly overlap.<sup>10</sup> OCR further determined that this significant disparity is substantial enough to deny female athletes an equal athletic opportunity. Consequently, OCR has determined that this difference with respect to the scheduling of boys' and girls' practice times during the PE/athletics class period, which ultimately reduces practice time for the female volleyball team, constitutes a significant disparity that warrants a determination of noncompliance with Title IX based on OCR's analysis of this program component.

The complainant also asserted that the JNCISD discouraged female participation in multiple sports by requiring volleyball athletes who also participated in volleyball to participate in a track off-season practice program during the spring even though they did not participate in track. The JNCISD informed OCR that the volleyball program had an off-season program from November 2013 through January 2014 (during basketball season). Beginning in February through the district track meet on April 4, 2013, all female athletes not in track or softball were in a generic off-season program during class time, and beginning April 7, 2014, all female athletes were in sport specific off-season programs, including basketball and volleyball. In the spring, boys are in a conditioning / weight-lifting period during class and participate in their spring sports after school. OCR did not find a significant disparity related to the spring off-season programs for boys and girls.

Additionally, the complainant alleged that XXXX coach was allowed to order girls out of the gym on weekends, which he alleged discouraged participation in multiple sports. However, the JNCISD stated that the gym is reserved on Saturdays from 3:00 to 5:00 for basketball use, and the volleyball coach has the opportunity to reserve the gym from 1:00 to 3:00. The volleyball athletes stated that they have voluntary practice on Sundays. Based on this information, OCR did not find any disparity related to scheduling of practice opportunities for girls during the weekend.

In summary, OCR determined that JNCISD's requirement that female dual-sport athletes, but not male dual-sport athletes, divide their PE/athletics class period practice time between an in-season and off-season sport (volleyball and basketball) denies female students equal athletic opportunity. Accordingly, OCR determined that JNCISD does not provide equal athletic

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<sup>10</sup> For example, the baseball and track seasons directly overlap in that competition for both sports begins in February and extends through April or May. OCR noted that the volleyball and girls' basketball program may overlap for a brief period of time, depending on the volleyball team's advancement to post-season competition. However, the football schedule may have a similar overlap with the boys' basketball schedule, depending on the football team's advancement to post-season competition.

opportunities to male and female students with respect to the provision of scheduling of games and practice times. Thus, OCR concluded that JNCISD failed to comply with the Title IX regulations, at 34 C.F.R. § 106.41(c)(3).

The JNCISD committed to a written resolution agreement (copy enclosed), signed on March 23, 2015, which addresses the aforementioned compliance concerns. OCR has determined that this agreement, upon full implementation, will satisfactorily resolve the compliance concerns. The provisions of the resolution agreement are aligned with the complaint allegations, the information obtained during the investigation, and consistent with applicable regulations.

Under the terms of the enclosed voluntary Agreement, the JNCISD will:

- Develop and implement policies and procedures designed to ensure that its scheduling of games and practice times is equivalent or equivalent in effect for the JNCISD boys' and girls' high school athletic teams; and
- Conduct mandatory training pertaining to Title IX for JNHS administrators, coaches, and athletic directors regarding the Title IX athletics compliance requirements (at 34 C.F.R. § 106.41), including the provision of equal athletic opportunity for members of both sexes in the scheduling of games and practice times.

OCR will monitor the JNCISD's progress in the implementation of the agreement. If JNCISD fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give JNCISD written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of this complaint and should not be interpreted to address the JNCISD'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 file a private suit in Federal court whether or not OCR finds a violation.

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If you have any questions, you may contact the attorney investigator assigned to this case, Lori Bringas, at (214) 661-9638 or [lori.bringas@ed.gov](mailto:lori.bringas@ed.gov), or Justin Evans, Team Leader, at (214) 661-9676 or [justin.evans@ed.gov](mailto:justin.evans@ed.gov).

Sincerely,

Taylor D. August  
Director  
Office for Civil Rights  
Dallas Office

Encl.