



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., 1620
DALLAS, TX 75201-6810

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

October 22, 2019

Mr. Craig Dupuy, Superintendent
Cleveland County School District
P.O. Box 600
Camden, AR 71701

Ref: 06-14-1411

Dear Superintendent Dupuy:

This letter is to notify you of the resolution of the above-referenced complaint received by the U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, and filed against the Cleveland County School District (CCSD or District), Rison, Arkansas. The complaint, which was received in our office on May 12, 2014, alleged that the CCSD discriminates against female students on the basis of their sex by failing to provide female students in Rison High School's athletics program with equivalent athletic opportunities. Specifically, this complaint raised the following allegations:

1. The CCSD only offers four sports for females at Rison High School, but offers five sports for male athletes;
2. Softball athletes have fewer games scheduled and played fewer games than the number allowed by the Arkansas Activities Association, but baseball athletes play more games;
3. Softball athletes only practice once with their coach prior to the commencement of the competition season, while baseball athletes have numerous practices with their coach;
4. Female athletes have their athletics period scheduled in the middle of the school day, while male athletes have their athletics period scheduled at the end of the day, and proceed directly into after-school practice;
5. Softball athletes are not permitted to be enrolled in athletics period during "off season," but baseball athletes are allowed to remain in athletics during the off-season;
6. Female athletes have to schedule their practice times around male athletes' practice times; and
7. Female athletes do not have access to their own weightlifting facility, but male athletes use the "Pride" athletic building for access to weights and indoor training.

This agency is responsible for enforcing Title IX, 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The CCSD

is a recipient of Federal financial assistance from the Department; therefore, OCR has jurisdictional authority to process this complaint for resolution pursuant to Title IX.

Legal Issue

Based on the complaint allegations and OCR's jurisdictional authority, OCR opened the following legal issue for investigation:

Whether the CCSD discriminates against female students on the basis of sex by failing to provide female students in the athletics program at Rison High School equivalent athletic opportunity in the accommodation of interest and abilities; scheduling of games and practice times; and the provision of locker rooms, practice and competitive facilities, in violation of Title IX, at 34 C.F.R. §§ 106.41(c)(1), (3), and (7).

Legal Standard

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a) provides that “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” athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis. The regulation further provides, at 34 C.F.R. § 106.41(c), that recipients “shall provide equal athletic opportunity for members of both sexes.” In determining whether equal athletic opportunities are provided, the regulations provide that OCR may consider, among other factors, the following:

- Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes (34 C.F.R. § 106.41(c)(1));
- Scheduling of games and practice time (34 C.F.R. § 106.41(c)(3));
- Provision of locker rooms, practice and competitive facilities (34 C.F.R. § 106.41(c)(7)).

To assess whether a recipient is providing equal athletic opportunities to members of both sexes, OCR utilizes the Department's “Intercollegiate Athletics Policy Interpretation,” issued December 11, 1979, and found at 44 *Fed. Reg.* 71413 *et seq.* (Policy Interpretation). The Policy Interpretation outlines OCR's approach to determining compliance in intercollegiate athletics, but states that its provisions are also generally applicable to interscholastic athletics.

As stated in Title IX's implementing regulation and OCR's Policy Interpretation, OCR may consider a variety of factors in determining whether a recipient is providing equal athletic opportunity for members of both sexes. In all, there are 13 major factors that may be considered by OCR, which OCR has termed “program components.” Within the 13 program components, the Policy Interpretation outlines specific factors to be considered by OCR in determining compliance. OCR may also add factors if determined necessary.

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.

In this complaint, OCR opened for investigation a consideration of three separate program components: (1) the accommodation of interests and abilities; (2) the scheduling of games and practice times; and (3) the provision of locker rooms, practice and competitive facilities. The specific factors considered by OCR in determining compliance with these program components are outlined below.

Accommodation of Interests and Abilities

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). The implementing regulation states that in determining whether equal opportunities are provided for boys and girls, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity.

In assessing whether the interests and abilities of the members of both sexes are being effectively accommodated to the extent necessary to provide equal opportunity to participate in interscholastic athletics, OCR uses the three-part test first established in the Department's "Intercollegiate Athletics Policy Interpretation," issued December 11, 1979, and found at 44 *Fed. Reg.* 71413 *et seq.* (Policy Interpretation). The provisions of the Policy Interpretation are generally applicable to interscholastic athletics. 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. An institution is in compliance if it has met any one of the following three parts of the test:

1. The athletic participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; *or*
2. There is a showing by the institution of a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex; *or*
3. It is demonstrated that the interests and abilities of the underrepresented sex are fully and effectively accommodated by the present program.

44 *Fed. Reg.* at 71416.

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.

Provision of Locker Rooms, Practice and Competitive Facilities

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.

Preliminary Findings

OCR began its investigation of this complaint by requesting and analyzing information from the CCSD regarding Rison High School's enrollment demographics, current interscholastic athletic offerings, the practice and competitive schedules of each interscholastic athletic team, and the facilities used by each interscholastic athletic team. OCR carefully reviewed this information.

OCR received documentation from the CCSD regarding its enrollment demographics and athletic participation numbers. Although Rison High School enrolls students beginning at grade six, athletic opportunities are provided only for students in grades seven through twelve at Rison High School. The CCSD reported to OCR that, during the 2017-18 academic year – the most recent year for which OCR obtained data – Rison High School enrolled a total of 390 students in grades seven through twelve, of which 186 (48%) were male, and 204 (52%) were female.

During the 2017-18 academic year, the CCSD further reported that it offered the following opportunities for interscholastic athletic competition at Rison High School:

Girls’ sports:

- Basketball (high school and junior high)
- Track (high school and junior high)
- Cross country (high school only)
- Softball (high school only)¹

Boys’ sports:

- Football (high school and junior high)
- Basketball (high school and junior high)
- Track (high school and junior high)
- Baseball (high school only)

The CCSD also provided OCR with the rosters for each of its sports teams, identifying the number of students participating in its offered sports, by sex. Participation numbers for the 2017-18 school year are illustrated in Figures 1 and 2, below.

**Figure 1
Athletic Opportunities – Female
2017-18 School Year**

Sport	Participants
Basketball	44
Track	38
Cross Country	8
Softball	19
TOTAL FEMALE OPPORTUNITIES	109

**Figure 2
Athletic Opportunities – Male
2017-18 School Year**

Sport	Participants
Football	71
Basketball	22
Track	23
Baseball	17
TOTAL MALE OPPORTUNITIES	133

¹ The CCSD also reported to OCR that the District offered Competitive Cheer and Sideline Cheer as girls’ sports during the 2017-18 school year. OCR does not currently recognize cheerleading as a sport for the purpose of determining whether a recipient is effectively accommodating the athletic interests and abilities of members of both sexes. Accordingly, for the purpose of determining the CCSD’s compliance with Title IX, OCR did not consider athletes competing in Competitive Cheer or Sideline Cheer.

Based on the above participation numbers, OCR determined that, during the 2017-18 school year, the CCSD offered a total of 242 athletic opportunities at Rison High School, of which 55% were offered to male athletes. In contrast, despite making up 52% of the enrollment at Rison High School during the same school year, female students were offered only 45% of the athletic opportunities. Therefore, the difference between male and female enrollment at Rison High School compared to their athletic participation rates during the 2017-18 school year was 7 percentage points, favoring males. In order to achieve exact proportionality between enrollment and athletic participation, Rison High School would have needed to add a total of 35 athletic participation opportunities for female athletes during the 2017-18 school year.

OCR also requested information from the CCSD regarding the history of the athletics program at Rison High School. The CCSD reported to OCR that football, boys' and girls' basketball, and boys' and girls' track have been in existence at Rison High School "for many years." The CCSD reported that baseball and softball were added in "approximately 1990." Finally, the CCSD reported to OCR that it could find no record of when girls' cross country was added, but the District believes that it was added in approximately 2004. The only other sport reported by the CCSD as being added at Rison High School in the past ten (10) years is Competitive Cheerleading; however, OCR does not currently recognize cheerleading as a "sport" for Title IX purposes. Further, the CCSD reported to OCR that it has not conducted any surveys or assessments of its student body to determine whether its current athletic offerings are sufficient to meet the athletic interests and abilities of its student body.

In its initial response to OCR, which OCR received in July 2014, the CCSD reported that the District hired a new Softball coach, which the District believed would "help resolve part of this complaint as the softball team will now be able to start practicing at the same time the baseball team starts practicing and more time will be devoted by [the] new coach to get [a] comparable schedule to [the] boys schedule." The CCSD further reported to OCR that, as of the 2014-15 school year, baseball athletes who do not participate in football or basketball are no longer permitted to remain enrolled in the athletic period during the offseason. With regard to the time of day that practices are scheduled, OCR's investigation confirmed that girls' athletics teams practice during second period each day, which is scheduled from approximately 8:48 a.m. until 9:33 a.m., as well as after school. Boys' athletics teams practice during their athletics period, which is scheduled during eighth period each day from 2:29 p.m. until 3:15 p.m., as well as after school. Accordingly, there may be a disparity favoring male athletes with regard to the "time of day" that practices are scheduled.

Finally, in its initial response to OCR, the CCSD reported that the "Pride Building" is predominantly used as a locker/dressing room for boys' football and track. According to the CCSD, the Pride Building's weight room is "open to all athletic teams under supervision of respective coach during period and/or sport." The CCSD's legal counsel reported to OCR during a telephone call that girls have access to the facility, but that some coaches of girls' sports do not wish to have their athletes use the facility.

Preliminary Analysis

OCR's preliminary investigation revealed a disparity between girls' enrollment rate at Rison High School and their athletic participation rate during the 2017-18 school year, the most recent year for which OCR obtained complete enrollment and athletic participation data. Therefore, the CCSD does not currently satisfy the first option under OCR's "three-part test" – that is, that the CCSD currently offers athletic participation opportunities for female students that are substantially proportionate to their respective enrollment. As stressed above, however, there are two other ways that the CCSD may demonstrate that it is effectively accommodating the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity to participate in interscholastic athletics. The CCSD may choose to show either that it has a history or continuing practice of program expansion or, in the alternative, that the interests and abilities of the underrepresented sex (here, female) are fully and effectively accommodated by the CCSD's current athletic program. OCR notes that the preliminary information provided by the CCSD does not indicate that there is a history or continuing practice of program expansion. Indeed, the CCSD reported to OCR that it has not conducted surveys or any other assessments of its student body to determine whether Rison High School's current athletic offerings are effectively accommodating the high school's student body.

With regard to the scheduling of games and practice times, OCR's preliminary investigation confirmed that girls' athletics is scheduled earlier in the day, while boys' athletics is scheduled at the end of the day, and thus carries over into scheduled after-school practices. Therefore, the "time of day" that practice opportunities are scheduled may favor male athletes. For example, because of the manner in which athletic periods are currently scheduled, male athletes are able to commence after-school practices directly after their athletic period, with no need for additional breaks or clothing changes. As a result, male athletes are afforded fewer disruptions in their practice schedule, which could result in additional practice time. In order to make a determination regarding whether female athletes are denied equal athletic opportunity with respect to the scheduling of games and practice times, however, OCR would also need to consider the number of competitive events per sport; the number and length of practice opportunities; the time of day that competitive events are scheduled; and the availability to participate in pre- and post-season competition. OCR has not obtained sufficient information from the CCSD in order to make a compliance determination with regard to the scheduling of games and practice times.

Finally, with regard to the provision of locker rooms, practice and competitive facilities, the CCSD reported to OCR that all athletes – male and female – are provided with access to the weight facilities located in the "Pride Building," which also serves as the dressing area/locking room for its football team and boys' track athletes. The CCSD – through its legal counsel – reported to OCR that at least some coaches of girls' sports elect to not have their athletes use the facility. In order to make a determination regarding whether female athletes are denied equal athletic opportunity with respect to the provision of locker rooms, practice and competitive facilities, OCR would also need to consider the quality and availability of the facilities provided for practice and competitive events; the availability of locker rooms; the quality of locker rooms; the maintenance of practice and competitive facilities; and the preparation of facilities for

practice and competitive events. OCR has not obtained sufficient information from the CCSD in order to make a compliance determination with regard to the provision of locker rooms, practice and competitive facilities.

Conclusion and Resolution

Prior to OCR investigating further and making a compliance determination, the CCSD expressed interest in taking action to voluntarily resolve the allegations made in this complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), allegations under investigation may be resolved at any time when, prior to the point when OCR issues a final determination, the recipient expresses an interest resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. In light of the CCSD's willingness to address the allegations made in this complaint without further investigation, OCR has determined that entering into a voluntary resolution agreement with the CCSD is appropriate in this case. Accordingly, OCR approved the CCSD's request to voluntarily resolve this complaint pursuant to Section 302 of the CPM.

The CCSD voluntarily submitted the enclosed Voluntary Resolution Agreement (Agreement) to OCR, signed by the CCSD's Superintendent on October 15, 2019. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR's preliminary investigation and are consistent with applicable law and regulations. OCR has determined that the Agreement, upon full implementation by the CCSD, satisfactorily resolves the allegations presented in this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement and accompanying Appendix, which is incorporated by reference into the Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor CCSD's implementation of the Agreement. Please be advised that if the CCSD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

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.

Please be advised that the CCSD 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 personal privacy.

If you have any questions regarding this letter or the Agreement, please contact Rachel Caum, Attorney, at (214) 661-9632, or at rachel.caum@ed.gov. You may also contact me, at (214) 661-9638, or at lori.bringas@ed.gov.

Sincerely,

/s/

Lori Howard Bringas
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure: Voluntary Resolution Agreement
Appendix to Voluntary Resolution Agreement

cc: XXXX XXXX (*email only*)