



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

February 2, 2018

Mr. Randy Johnson, Superintendent of Schools
Forsan Independent School District
411 W. 6th Street
P.O. Box 689
Forsan, TX 79733

Ref: 06-17-1228

Dear Superintendent Johnson:

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 Forsan Independent School District (FISD), Forsan, Texas. The complaint, which was received in our office on December 16, 2016, alleged that the FISD discriminates against female students on the basis of their sex. Specifically, the complaint alleged that the FISD fails to offer a selection of sports which effectively accommodates the interests and abilities of students of both sexes, by failing to offer a fall sport (e.g., volleyball) for female athletes, although the FISD offers football as a fall sport for male athletes.

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 FISD 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.

Issue Investigated

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

1. Whether the FISD provides equal athletic opportunity for male and female athletes by offering a selection of sports and levels of competition which effectively accommodates the interests and abilities of members of both sexes, in accordance with Title IX and its implementing regulation, at 34 C.F.R. § 106.41(c)(1).

As a preliminary matter, 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 that it is more likely than not that unlawful discrimination occurred). Where there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

OCR began its investigation of this complaint by requesting and analyzing information from the FISSD regarding its enrollment demographics and current interscholastic athletic program offerings and participation rates. OCR carefully reviewed the information provided. A discussion of the legal standards applied by OCR, as well as an analysis of the information obtained by OCR during its investigation, is provided below.

Legal Standard

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. OCR also refers to other policy guidance that was issued in 1996 and 2010 and that specifically discusses the application of the three-part test.¹ 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.

Preliminary Investigative Findings

The complainant alleged that the FISSD, Forsan Junior/Senior High School (FJSHS), discriminates against female athletes on the basis of sex. Specifically, the complainant alleged that FJSHS fails to offer a fall sport for female athletes, but offers football as a fall sport for male athletes.

¹<http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>;
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.html>

The Fisd is a small school district located in the western part of Texas. The Fisd is headquartered in the town of Forsan, but also serves students from the town of Elbow and parts of southeastern Howard County, Texas. The Fisd operates one elementary school, Forsan Elementary School. The Fisd enrolls students from grades six through twelve on one campus, FJSHS. Data from the Texas Education Agency (TEA) reveals that, during the 2016-17 school year, Forsan Elementary School enrolled 395 students, and FJSHS enrolled 359 students. Therefore, according to TEA data, the Fisd enrolled a total of 754 students during the 2016-17 school year.

The Fisd offers extracurricular athletics only at its Junior/Senior High School campus (FJSHS). Broken down by sex, the Fisd reported to OCR its enrollment numbers at FJSHS for the 2015-16 and 2016-17 school years as follows:

2015-16

Girls – 176
Boys – 185
Total – 361

2016-17

Girls – 162
Boys – 197
Total – 359

OCR opened this complaint for investigation prior to the conclusion of the 2016-17 school year. Accordingly, at that time, the most recently-completed school year was the 2015-16 school year. For that school year, the Fisd reported its enrollment, broken down by sex and grade level, as the following:

**2015-16 Enrollment at FJSHS
Grades 7-12²**

Grade	Girls	Boys	Total
7	30	24	54
8	25	29	54
9	35	18	53
10	18	28	46
11	27	26	53
12	22	21	43
TOTAL	157 (52%)	146 (48%)	303

² The overall enrollment at FJSHS was a total of 361 students during the 2015-16 school year, as noted above. While FJSHS enrolls students in grades six through twelve, however, interscholastic athletic opportunities are only available for students in grades 7 through 12. Accordingly, for purposes of comparing enrollment by sex with athletic participation by sex at FJSHS, OCR only considered FJSHS enrollment in grades 7 through 12.

Interscholastic athletics in the state of Texas is overseen by the University Interscholastic League (UIL), which organizes and administers region and state championship competition in a total of 14 sports. At the high school level, the UIL sanctions the following sports: baseball, basketball, cross country, football, golf, soccer, softball, swimming and diving, team tennis, tennis, track and field, volleyball, and wrestling. The UIL also sanctions each of these sports at the junior high level, with the exception of team tennis, which is only sanctioned at the high school level.

The FISSD does not currently offer each of the above-listed sports currently sanctioned by the UIL. In addition to the sports sanctioned by the UIL, however, the FISSD does offer the opportunity for both male and female athletes to participate in powerlifting. During the 2015-16 and 2016-17 school years, the FISSD offered the following sports to its students:

Boys' sports

- Football (junior high and high school)
- Basketball (junior high and high school)
- Cross country (junior high and high school)
- Track (junior high and high school)
- Tennis (junior high and high school)
- Baseball (high school only)
- Golf (high school varsity only)
- Powerlifting (high school only)

Girls' sports

- Basketball (junior high and high school)
- Cross country (junior high and high school)
- Track (junior high and high school)
- Tennis (junior high and high school)
- Softball (high school only)
- Golf (high school varsity only)
- Powerlifting

The FISSD provided OCR the number of students participating in its offered sports, by sex. Participation numbers for the 2015-16 school year – the most recently-completed school year at the time that OCR opened this complaint for investigation – are illustrated in the figures below.

**Figure 1
Athletic Opportunities – Male
2015-16 School Year**

Sport	Participants
Football	88
Basketball	57
Cross country	16

Sport	Participants
Track	49
Tennis	36
Baseball	28
Golf	1
Powerlifting	11
TOTAL MALE OPPORTUNITIES	286

Figure 2
Athletic Opportunities – Female
2015-16 School Year

Sport	Participants
Basketball	45
Cross country	19
Track	43
Tennis	49
Softball	23
Golf	5
Powerlifting	6
TOTAL FEMALE OPPORTUNITIES	190

Based on the enrollment and participation numbers reported by the FISD, OCR determined that, during the 2015-16 school year, the FISD offered a total of 476 athletic opportunities at FJSHS, of which 286 (60%) were offered to male students. In contrast, despite making up 52% of enrollment at FJSHS during the same school year, female students were only offered 40% of the athletic opportunities. Therefore, the difference between the enrollment rate of girls at FJSHS and their interscholastic participation rate in 2015-16 was 12 percentage points, representing a total of 119 opportunities needed to gain proportionality between enrollment and participation.

The FISD further reported to OCR, however, that it does have plans to expand its athletic program. Specifically, the FISD reported to OCR that it is currently in the early stages of adding volleyball to its athletic program. The FISD’s plans include using the current school year – the 2017-18 school year – as a planning year to include the hiring of additional coaching staff. Beginning in the 2018-19 school year, the FISD plans to introduce volleyball at the junior high level. Thereafter, the FISD intends to compete at a junior varsity level during the 2019-20 school year and, finally, to offer volleyball at all levels (junior high, junior varsity, and varsity) in the 2020-21 school year. Moreover, the FISD reported that it most recently surveyed its students’ athletic interests during the 2016-17 academic year. The FISD provided OCR with documentation evidencing these survey results.

Preliminary Legal Analysis and Resolution

As noted above, OCR's preliminary investigation revealed a disparity between girls' enrollment rate and their athletic participation rate during the 2015-16 school year, the most recent year for which OCR obtained complete enrollment and athletic participation data. Therefore, the FISD does not currently satisfy the first option under OCR's "three-part test" – that is, that the FISD 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 FISD 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 FISD 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 FISD's current athletic program.

The FISD reported to OCR both that it has conducted surveys of its students to assess the current interests and abilities of its student body and, further, that the FISD has a plan in place to expand its current athletic program by introducing girls' volleyball. Prior to OCR investigating further and making a determination as to whether the FISD currently satisfies any part of the "three-part test," the FISD requested to voluntarily resolve this complaint. Under Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved at any time when, prior to the conclusion of the investigation, a recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to do so. In light of the FISD's willingness to address the issue raised in this complaint without further investigation, OCR has determined that entering into a voluntary resolution agreement with the FISD is appropriate.

The FISD submitted a signed Voluntary Resolution Agreement (Agreement) to OCR on February 2, 2018. Enclosed is a courtesy copy of the Agreement. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulations. OCR has determined that this Agreement, upon full implementation, satisfactorily resolves the legal issue opened for investigation. Therefore, OCR is closing the investigative phase of this complaint. OCR will monitor the FISD's implementation of the Agreement.

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 a recipient 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.

OCR would like to thank the FISSD for its cooperation with OCR in order to successfully resolve this complaint. If you have any questions about this matter, please contact Ms. Rachel E. Caum, OCR 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