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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1201 Elm STREET, SUITE 1000
DALLAS, TEXAS 75201-6831

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

January 7, 2022

OCR Ref: 06211490

Dr. René Gutiérrez, Superintendent
Brownsville Independent School District
1900 Price Road
Brownsville, TX 78521

Via email (rene.gutierrez@bisd.us)

Dear Dr. Gutiérrez:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, received in our office on June 23, 2021, filed against the Brownsville Independent School District (the District), in Brownsville, Texas. The Complainant alleged that the District is discriminating on the basis of sex by failing to provide equal athletic opportunities to participants in the girls' athletics program. Additionally, the Complainant alleged that the District is discriminating against students with disabilities.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipients), or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104; and 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. Section 504 prohibits discrimination on the basis of disability and Title IX prohibits discrimination on the basis of sex. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The District is a recipient and a public entity. Therefore, OCR has jurisdiction to process this complaint for resolution.

OCR opened the following legal issues for investigation:

1. Whether the District is failing to provide equal athletic opportunity to female students in interscholastic athletics at Rivera ECHS, Porter ECHS, Pace ECHS, and Lopez ECHS regarding the provision of practice and competitive facilities, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.41(c);
2. Whether the District is failing to provide equal athletic opportunity to female students in interscholastic athletics at Rivera ECHS, Hanna ECHS, Porter ECHS, Pace ECHS, and

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Lopez ECHS regarding housing and dining facilities and services, and publicity, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.41(c);

3. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the District because the softball fields at Rivera ECHS, Porter ECHS, Pace ECHS, and Lopez ECHS do not have sufficient accessible audience-member seating, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively; and
4. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the District because the softball field at Rivera ECHS does not have accessible parking, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

Regarding issues 1 and 2 above, OCR reviewed information provided by the Complainant and the District and conducted preliminary interviews with the Complainant and District Staff. OCR's preliminary review of the information indicates the District reported smaller bleacher areas for softball fields at all the named schools compared to the baseball fields at the schools identified in the complaint. Additionally, all of the baseball fields have a press box whereas the girls' softball fields do not. The District indicated that the softball teams had portable speakers available, but as the Complainant alleges, the press boxes provide significantly greater amplification for the audience to hear game announcements of players and commentary as well as music for player and spectator morale. Furthermore, the District acknowledged disparities in concession stand use between the baseball and softball teams at Riviera and Hanna. The District indicated Riviera has a concession stand between the baseball and softball fields that could be used by either team. OCR's preliminary review indicates the softball team does not use the concession stand because, whereas the baseball team does. At Hannah, the District indicated the concession stand is next to only the baseball field but the District planned for both baseball and softball to share the stand. However, the District indicated that the revenue may benefit only the baseball team, despite softball patrons spending at the same concession stand. According to the Complainant, the concession stand revenue is used for the baseball team to have pre-game meals and awards ceremonies at the end of the season, whereas the softball team does not receive concession revenue for these events. OCR's preliminary review reflects a concern that a substantial disparity may exist between male and female athletic programs at Riviera, Hanna, Porter, Pace, and Lopez regarding the Title IX regulatory components under issues 1 and 2 above.

With respect to issues 3 and 4 above, OCR's preliminary review indicates the Lopez softball field was constructed in 1998, the Rivera softball field was constructed in 1996, the Hanna softball field was constructed in 1999, the Pacer softball field was constructed in 1986, and the Porter softball field was constructed in 1985. OCR's preliminary review indicates the relevant accessibility standards for Porter and Pace are the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). For Hanna, Lopez, and Rivera the Uniform Federal Accessibility Standards (UFAS) or 1991 Americans with Disabilities Act Guidelines (1991 Standards) are applicable. UFAS and the 1991 standards both require curb ramps where an accessible route to/from accessible parking crosses a curb. Regarding softball field seating, the UFAS standards require wheelchair locations adjoin an accessible route and be located to provide lines of sight

comparable to those of all viewing areas. UFAS also requires at least three wheelchair locations for assembly spaces with a capacity of 50 to 75 and an increased number of wheelchair locations for larger seating capacities. The 1991 Standards require wheelchair locations have at least one companion fixed seat provided next to each wheelchair seating area. Regarding the number of wheelchair locations, the 1991 Standards require 1 for a capacity of 4 to 25, 2 for a capacity of 26 to 50, and 4 for a capacity of 51 to 300. The District indicated there was space for wheelchairs at all listed schools in designated spaces on the first level of the bleachers and space to the sides and in front of the of the bleachers that was flat where a wheelchair could be accommodated. In a telephone call with OCR, a District Staff member stated that there was no accessible route to the softball field at Rivera – located across the street from the school. Arial photographs of Rivera provided by the District demonstrate that the field is across a street from the school parking lot, and the photos reflect no accessible crossing to the softball field. There are no visible crosswalks or curb ramps to allow a person with disabilities to cross the street from the parking lot to the field. OCR's preliminary review reflects a concern as to a lack of accessible audience-member seating at Rivera, Porter, Pace, and Lopez, and the lack of accessible parking and/or an accessible route to the softball field at Rivera ECHS.

Prior to the conclusion of OCR's investigation, the District informed OCR that it was interested in resolving the complaint. Section 302 of OCR's Case Processing Manual provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the District's request to resolve the complaint.

The District voluntarily signed the enclosed resolution agreement (Agreement) on January 6, 2022. OCR determined the Agreement addresses and, when fully implemented, resolves the issues under investigation. Thus, OCR is closing the investigation of this complaint as of the date of this letter. However, OCR will monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR will resume investigative activities.

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. You may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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 about this letter, please contact Brian Aurelio, the attorney assigned to investigate your complaint, at (214) 661-9661, or by e-mail at Brian.Aurelio@ed.gov. You may also contact me at 214-661-9648 or by e-mail at Timothy.Caum@ed.gov.

Sincerely,

For: Timothy D. Caum
Supervisory Attorney/Team Leader
OCR, Dallas Office