



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
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February 2, 2018

Sent via email and First Class Mail

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Re: Enid Public Schools
OCR Case Number: 07-15-1052

Dear XXX XXXXXXXXXXX:

On November 17, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of sex by your client the Enid Public Schools (District), Enid, Oklahoma. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In this complaint, OCR examined whether the District operates an interscholastic athletics program that fails to provide benefits, opportunities, and services to female athletes that are equivalent to those provided to male athletes in regard to the following program components:

1. equally and effectively accommodating the athletic interests and abilities of male and female students in the middle school program;
2. provision of locker rooms, practice and competitive facilities in both the middle school and high school programs; and
3. scheduling of games and practice times in the middle school program.

During the investigation, OCR reviewed documentation submitted by the District, conducted an on-site visit to examine the District’s facilities, and interviewed members of the athletics

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

department, including a sampling of head coaches and District administrators involved with athletics. Prior to the completion of OCR’s investigation, the District requested to voluntarily resolve the matter pursuant to Section 302 of OCR’s *Case Processing Manual (CPM)*.¹ OCR determined it was appropriate to resolve issue 1 (the accommodation of athletic interests and abilities of male and female students) and issue 2 (the provision of locker rooms, practice facilities, and competitive facilities) through the voluntary resolution process. On January 31, 2018, the District submitted to OCR the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the issues raised in issues 1 and 2 of this complaint. With respect to issue 3 (the scheduling of games and practice times in the middle school program), OCR determined the allegation is moot given the schedule revisions the District has implemented at the middle school level. As such, OCR is closing issue 3 as of the date of this letter pursuant to *CPM* Section 110(o)(1) which states OCR may close a complaint allegation when the allegation becomes moot and there is nothing further for OCR to investigate and resolve.

To protect individuals’ privacy, the names of employees and other parties were not used in this letter. The applicable regulatory requirements, a summary of OCR’s investigation to date, and a summary of the resolution are set forth below.

I. LEGAL STANDARD

The regulation implementing Title IX, at 34 C.F.R. § 106.41(a), specifically prohibits discrimination on the basis of sex in athletic programs offered by recipients of financial assistance from the Department. The regulation implementing Title IX, at 34 C.F.R. § 106.41(c) states that a recipient that operates or sponsors athletic teams must provide equal opportunity for members of both sexes.

On September 17, 2008, OCR issued a Dear Colleague letter entitled, *Athletic Activities Counted for Title IX Compliance*.² The 2008 letter notes that “OCR does not have a specific definition of the term ‘sport.’ Instead, OCR considers several factors related to an activity’s structure, administration, team preparation and competition.” The letter continues, noting that many institutions are members of state high school associations that have organization requirements that address the factors identified by OCR. “When the organization requirements satisfy these factors and compliance with the requirements is not discretionary, OCR will presume that such an institution’s established sports can be counted under Title IX. This presumption can be rebutted by evidence demonstrating that the institution is not offering the activity in a manner that satisfies the factors below.”

In its case-by-case evaluation of whether an activity can be counted as an interscholastic sport for the purpose of *Title IX* compliance, OCR will consider all of the following factors:

¹ The *Case Processing Manual* is available on OCR’s website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

² This letter was cited favorably in *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 93 (2d Cir. 2012) and is available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.pdf>.

I. PROGRAM STRUCTURE AND ADMINISTRATION – Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the activity is structured and administered in a manner consistent with established interscholastic varsity sports in the institution’s athletics program, including:

- A. Whether the operating budget, support services (including academic, sports medicine and strength and conditioning support) and coaching staff are administered by the athletics department or another entity, and are provided in a manner consistent with established varsity sports; and
- B. Whether the participants in the activity are eligible to receive athletic awards (e.g., varsity awards) if available to athletes in established varsity sports; to the extent that an institution recruits participants in its athletics program, whether participants in the activity are recruited in a manner consistent with established varsity sports.

II. TEAM PREPARATION AND COMPETITION – Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the team prepares for and engages in competition in a manner consistent with established varsity sports in the institution’s interscholastic athletics program, including:

- A. Whether the practice opportunities (e.g., number, length and quality) are available in a manner consistent with established varsity sports in the institution’s athletics program; and
- B. Whether the regular season competitive opportunities differ quantitatively and/or qualitatively from established varsity sports; whether the team competes against interscholastic varsity opponents in a manner consistent with established varsity sports;

When analyzing this factor, the following may be taken into consideration:

- 1. Whether the number of competitions and length of play are predetermined by a governing athletics organization, an athletic conference, or a consortium of institutions;
 - 2. Whether the competitive schedule reflects the abilities of the team; and
 - 3. Whether the activity has a defined season; whether the season is determined by a governing athletics organization, an athletic conference, or a consortium.
- C. If pre-season and/or post-season competition exists for the activity, whether the activity provides an opportunity for student athletes to engage in the pre-season and/or post-season competition in a manner consistent with established varsity sports; for example, whether state, national and/or conference championships

exist for the activity; and

- D. Whether the primary purpose of the activity is to provide athletic competition at the interscholastic varsity levels rather than to support or promote other athletic activities.

When analyzing this factor, the following may be taken into consideration:

1. Whether the activity is governed by a specific set of rules of play adopted by a state, national, or conference organization and/or consistent with established varsity sports, which include objective, standardized criteria by which competition must be judged;
2. Whether resources for the activity (e.g., practice and competition schedules, coaching staff) are based on the competitive needs of the team;
3. If post-season competition opportunities are available, whether participation in post-season competition is dependent on or related to regular season results in a manner consistent with established varsity sports; and
4. Whether the selection of teams/participants is based on factors related primarily to athletic ability.

For purposes of resolving of this complaint, OCR did not determine whether certain activities offered by the District constitute an interscholastic sports based on the above factors. For purposes of analysis only, OCR presumed that the District's identified sports could be counted under Title IX.

A. Accommodation of Athletic Interests and Abilities – 34 C.F.R. § 106.41(c)(1)

The Title IX regulation at 34 C.F.R. § 106.41(c)(1) requires that a recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal opportunity for members of both sexes. In determining whether equal opportunities are available, OCR will examine whether the selection of sports and levels of competition effectively accommodate the interests and ability of both sexes.

The Title IX regulation requires institutions to effectively accommodate the interests and abilities of students to the extent necessary to provide equal opportunity in the selection of sports and the levels of competition available to members of both sexes. In effectively accommodating the interests and abilities of male and female athletes, institutions receiving Federal financial assistance must provide the opportunity for individuals of each sex to participate in interscholastic competition and to have competitive team schedules that equally reflect their abilities. To determine compliance with this component area, OCR determined whether the selection of sports and levels of competition in the interscholastic athletics program at the District fails to effectively accommodate the interests and abilities of members of both sexes.

OCR’s determination regarding an institution’s compliance with this component involves a two-element analysis regarding: (1) equal opportunities to compete; and (2) levels of competition. For the first element of this determination, OCR will apply the following Three-Part test to assess whether an institution is providing equal participation opportunities for individuals of both sexes.³

- (1) Whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of that sex; or
- (3) Where the members of one sex are underrepresented among interscholastic athletes and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The Three-Part test furnishes three individual avenues for measuring compliance with the requirement to provide individuals of each sex with nondiscriminatory opportunities to participate in interscholastic athletics. If an institution has met any part of the Three-Part test, OCR will determine that the institution is meeting this requirement.

B. Locker Rooms, Practice Facilities, and Competitive Facilities - 34 C.F.R. § 106.41(c)(7)

When assessing compliance with the program component of the Provision of Locker Rooms, Practice and Competitive Facilities, OCR analyzes the following six factors:

1. Quality and availability of 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.

³ See also Dear Colleague letter, dated January 16, 1996, entitled “Clarification of Intercollegiate Athletic Policy Guidance: the Three-Part Test” (1996 Clarification); Dear Colleague letter dated July 11, 2003, entitled “Further Clarification of Intercollegiate Athletics Policy” (2003 Clarification); and Dear Colleague Letter issued on April 20, 2010, entitled “Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three” (2010 Clarification).

C. Scheduling of Games and Practice Time - 34 C.F.R. § 106.41(c)(3)

In assessing whether the District is providing male and female athletes equivalent benefits and opportunities with respect to the scheduling of games and practice time, OCR considers the number of competitive events per sport, the time of day that competitive events and practice opportunities are scheduled, the number and length of practice opportunities, and the opportunities to engage in pre-season and post-season competition.

II. BACKGROUND AND PRELIMINARY INVESTIGATIVE FINDINGS

The Complainant alleged the District is discriminating on the basis of sex in its interscholastic athletics program at the middle school level, by failing to equally and effectively accommodate the athletic interests and abilities of male and female students in its middle school programs. The complaint also alleged the District fails to provide equivalent benefits to female athletes with respect to locker rooms, practice facilities, and competitive facilities at the middle and high school levels, as well as the scheduling of games and practice times in the middle school programs.

A. Effective Accommodation of Athletic Interests and Abilities

OCR examined whether the District provided male and female students an equal opportunity to participate in its interscholastic athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1).

Part One: Substantially Proportionate Participation Opportunities

Under Part One of the Three-Part Test, where an institution provides interscholastic level athletic participation opportunities for male and female students in numbers substantially proportionate to their respective full-time enrollments, OCR will find that the institution is providing non-discriminatory participation opportunities for individuals of both sexes. OCR will also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team; i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an interscholastic team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number that might vary by institution.

To establish whether competitive opportunities were substantially proportionate to enrollment, OCR examined participation opportunities for academic year 2015-16. To establish the number of interscholastic athletic participation opportunities, OCR examined the squad lists prepared by the District and provided to OCR. In determining participation opportunities, OCR counted the number of actual athletes participating⁴ in each competitive sport identified by the District.⁵

⁴ As a general rule, OCR counts all student athletes listed on a team's squad or eligibility list who are on the team as of the team's first competitive event. Under the interests and abilities analysis, a student athlete who participates in more than one sport will be counted separately as a participant in each sport.

⁵ An extracurricular activity not involving competition as its purpose is not considered a competitive sport for purposes of the interests and abilities analysis. Based on the information provided by the District, and during

As shown below, the District offers 17 middle school interscholastic and club sports, of which there are 6 teams for males, 8 teams for females, and 3 teams open to both males and females.

| Middle School Sports | |
|----------------------|---------|
| Sport | Open To |
| Baseball | Boys |
| Basketball | Boys |
| Basketball | Girls |
| Cheer | Both |
| Cross Country | Boys |
| Cross Country | Girls |
| Football | Both |
| Golf | Boys |
| Golf | Girls |
| Pom | Girls |
| Softball | Girls |
| Tennis | Boys |
| Tennis | Girls |
| Track | Boys |
| Track | Girls |
| Volleyball | Girls |
| Wrestling | Both |

The District maintains three middle schools, Emerson, Longfellow, and DeWitt Waller. The total middle school student population in the District for the 2015-16 academic year was 1,589, of which 804 (50.60%) were male, and 785 (49.40%) were female. During the 2015-16 academic year, there were 589 athletes at the middle school level, of which 325 (55.18%) were male, and 264 (44.82%) were female. As compared to the overall middle school population in the District, the female participation rate in the interscholastic athletics program during the 2015-16 academic year was not proportionate to the female enrollment in the District.

During the 2015-15 academic year, there was a 10.36 percentage point differential between male and female athletes at the middle school level. The disparity between the athletic participation and respective enrollments for male and female students is significant.

OCR does not require *exact* proportionality between participation and enrollment for the underrepresented sex, but rather requires *substantial* proportionality. Whether participation

interviews with coaches, OCR considered the District’s identified club teams for middle school baseball, cross country, and softball as competitive sports for purposes of its analysis of participation opportunities. OCR also included cheer and pom as competitive sports for purposes of its analysis as even with the inclusion of these female or female dominated sports teams, the District’s athletic participation rates for the 2015-16 school year were not substantially proportionate.

opportunities are “substantially” proportionate to enrollment rates depends on the institution’s specific circumstances and the size of its athletic program. Consequently, OCR makes this determination on a case-by-case basis, rather than through use of a statistical test. Nonetheless, in order to establish a baseline, OCR analyzed how many athletic opportunities the District would have to add for females – the underrepresented sex – in order to achieve exact and/or substantial proportionality while maintaining 325 athletic opportunities for male athletes at the middle school level. OCR’s analysis is detailed below.

Middle School

| | | |
|--|---|-----------------------------------|
| <u>325 (male athletic opportunities)</u> | = | <u>50.60% (male enrollment)</u> |
| <u>X (female athletic opportunities)</u> | | <u>49.40% (female enrollment)</u> |
| 50.60 * X = (325) * (49.40) | | |
| 50.60 * X = 16,055 | | |
| Divide both sides of the equation by 50.60 | | |
| X = 317.29 | | |

For exactly proportional athletic participation with the District maintaining its current athletic opportunities for males, the District would have to provide 53 athletic opportunities for females at the middle school level (317-264), to equalize athletic opportunities at the middle school level.

OCR considers opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportion would not be sufficient to sustain a viable team. The average size of an athletic squad for females in the District at the middle school level is 18.71 athletes.⁶ As noted above, the District would have needed 53 additional opportunities for female student athletes at the middle school level to achieve exact proportionality, which would translate to a minimum of 2 additional sports teams with an average team size of 18.71 female athletes to achieve substantial proportionality.

Given the rates of participation and enrollment for the 2015-16 academic year, OCR determined that the District was not providing equivalent interscholastic level participation opportunities for female students in numbers substantially proportionate to their enrollment at the middle school level. Therefore, OCR next considered whether the District could show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of female students because females have been and are underrepresented among interscholastic athletes in the District.

Part Two: History and Continuing Practice of Program Expansion

Under Part Two of the Three-Part test, an institution may demonstrate compliance by showing that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. Part Two examines an institution’s past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

⁶ For purposes of finding an average squad size, OCR did not include one middle school female participating on the football and wrestling teams.

OCR considers the following factors, among others, as evidence indicating an institution’s history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- A record of adding interscholastic teams, or upgrading teams to interscholastic status, for the underrepresented sex;
- A record of increasing the numbers of participants in interscholastic athletics who are members of the underrepresented sex; and
- An affirmative response to requests by students or others for addition or elevation of sports.

OCR will also consider the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- The current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students; and
- The current implementation of a plan of program expansion that is responsive to developing interests and abilities.

OCR will not determine that an institution satisfies Part Two where it merely promises to expand its program for the underrepresented sex at some time in the future.

Program History in the District

In order to determine whether the District has shown a history and continuing practice of program expansion demonstrably responsive to the developing interests and abilities of the underrepresented sex (females), OCR reviewed data submitted by the District and conducted interviews with the District administrators and coaches. The District provided information on the approximate start date of its middle school interscholastic and club sports programs (as detailed in the below chart) and also provided general history of the programs from 2000 to present day.

| Middle School Sports Development | |
|----------------------------------|--------------------|
| Sport | Adopted (Estimate) |
| Baseball | 2000 |
| Basketball (Boys) | 1920s-1930s |
| Basketball (Girls) | 1974 |
| Cheer | 1940s |
| Cross Country (Boys) | 1950s |
| Cross Country (Girls) | 1950s |
| Football | 1920s-1930s |
| Golf (Boys) | 1930s |
| Golf (Girls) | 1974 |
| Pom | 2000 |
| Softball | 2000 |
| Tennis (Boys) | 1940s |
| Tennis (Girls) | 1974 |
| Track (Boys) | 1920s-1930s |
| Track (Girls) | 1920s-1930s |
| Volleyball | 1998 |
| Wrestling | 1978 |

The most recent additions to the middle school program happened between 1998 and 2000. While the majority of those additions have benefited female student athletes (Volleyball, Pom,⁷ and Softball), there have not been any additions since 2000 to increase athletic participation opportunities for female student athletes in the District. Prior to the additions between 1998 and 2000, the District had not added any sports since 1978 when it added wrestling, and in 1974, two years after the enactment of Title IX, the District added Girls’ Basketball, Girls’ Golf, and Girls’ Tennis. The District has not eliminated any sports teams over its history.

The District has recently implemented an intramural club soccer program during the regular school day at one of the middle schools which has expanded, but at this time it is not a District sponsored sport or regular club sport, nor part of the District’s athletic conference.

Record of Participation

OCR’s review of District data from the 2013-14, 2014-15, and 2015-16 academic years did not reveal a significant record of increasing participation rates for female student athletes, but rather a fairly consistent breakdown of male and female student athletes.

According to the District, there have been no unsuccessful attempts to add sports in the District in recent years. The District does not have a formal, developed system for analyzing whether new sports can be added or eliminated from its middle school programs. The District also does

⁷ The Oklahoma Secondary School Activities Association, of which the District is a member, classifies Pom as a coed sport. However, a review of roster information shows that only female student athletes participated in 2015-16.

not have a formal policy, procedure, or format for individuals or groups to request the addition of a new sport. The District does continually evaluate the need to expand its athletic program through receiving input informally throughout the school year from students, staff, and members of the community. The District is also engaged in crafting a multi-year strategic plan, one of the goals of which is to ensure the District continues to offer a wide-range of extracurricular programs including athletics. During interviews, coaches at the District stated that they had not heard of any requests to add sports other than some discussions about the possibility of elevating middle school softball from a club sport to a full District-sponsored sport, and some requests to formally add middle school soccer for both sexes.

Based on the information provided, OCR determined the District has not added any interscholastic girls' athletic teams since 2000, its participation numbers have not meaningfully increased, and it does not have a formal process currently in place for requesting and adding a new sport.

Part Three: Effective Accommodation of Interests and Abilities

Under Part Three of the Three-Part Test, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes when it can be demonstrated that the interests and abilities of the members of the underrepresented sex have been fully and effectively accommodated by the present program.

In determining compliance with Part Three of the Three-Part test, OCR determines whether, despite being unable to satisfy either Part One (substantial proportionality) or Part Two (history and continuing practice of program expansion), an institution is nevertheless fully and effectively accommodating the interests and abilities of the underrepresented sex. In making this determination, OCR considers whether: (a) there is an unmet interest in a particular sport; (b) there is sufficient ability to sustain a team in the sport, and (c) there is a reasonable expectation of competition for the team. OCR uses a broad range of indicators to make this determination, including:

- whether the institution uses nondiscriminatory methods of assessment when determining interests and abilities;
- the frequency of the institution's surveys/assessments;
- whether the institution's surveys/assessments have been used to eliminate viable teams;
- an evaluation of multiple indicators to assess interest; and
- an evaluation of multiple indicators to assess ability.

The District is a member of the Oklahoma Secondary Schools Activities Association ("OSSAA"), and a member of the Oklahoma Big 10 Conference, which began play in the 2014-15 school year. The OSSAA as of 2016-17 has 483 members including the District, and oversees 14 sports, of which the District competes in all of the sports with the exception of slow pitch softball (the District competes in fast pitch softball), as detailed below.

| OSSAA Sports | | | | |
|-----------------------|--------------------|--------|-----------------------------------|--|
| Sport | District Competes? | Grades | Notes | |
| Baseball | Yes | 7-12 | Club Sport at Middle School Level | |
| Basketball (Boys) | Yes | 7-12 | | |
| Basketball (Girls) | Yes | 7-12 | | |
| Cheer | Yes | 7-12 | Sport Open to Males and Females | |
| Cross Country (Boys) | Yes | 7-12 | Club Sport at Middle School Level | |
| Cross Country (Girls) | Yes | 7-12 | Club Sport at Middle School Level | |
| Fast-Pitch Softball | Yes | 7-12 | Club Sport at Middle School Level | |
| Football | Yes | 7-12 | Sport Open to Males and Females | |
| Golf (Boys) | Yes | 7-12 | | |
| Golf (Girls) | Yes | 7-12 | | |
| Slow-Pitch Softball | No | n/a | | |
| Soccer (Boys) | Yes | 9-12 | | |
| Soccer (Girls) | Yes | 9-12 | | |
| Swimming (Boys) | Yes | 9-12 | | |
| Swimming (Girls) | Yes | 9-12 | | |
| Tennis (Boys) | Yes | 7-12 | | |
| Tennis (Girls) | Yes | 7-12 | | |
| Track (Boys) | Yes | 7-12 | | |
| Track (Girls) | Yes | 7-12 | | |
| Volleyball | Yes | 7-12 | | |
| Wrestling | Yes | 7-12 | Sport Open to Males and Females | |

The District also fields teams at grade levels 7 through 12 for males and females in Pom, which is under the auspices of the Oklahoma State Dance Team Director’s Association (OSDTDA).

OCR asked the District to describe the methods it has used to determine the athletic interests and abilities of students and to provide copies of any surveys, questionnaires, or assessments conducted of students’ athletic interests and abilities. The District conducts an activities survey, and provided a copy from the 2015-16 school year which surveyed District students on their current extracurricular participation, and what activities not offered they would like to see added. During interviews, the District indicated that this survey is conducted once a year, and is part of the District’s strategic plan to increase athletic opportunities for students. The District indicated the survey results are analyzed and provided to the Board of Education. As a result of receiving this feedback, the District stated it has undertaken efforts to increase opportunities, including a recent addition to the intramural program at the 6th grade level.

The District also informally gauges students’ interests and abilities through discussions during advisement sessions between students and counselors. Interests shared during these sessions are discussed among staff members in an effort to determine possible expansion of programs. The District also facilitates ongoing discussion through public events including Board of Education meetings, and through invitations to student representatives from each school site to attend a board meeting and share information about their school. Public meetings are also held each February and March at school sites for discussion of various school issues, including extracurricular activities. The District also indicated an “enrichment opportunities” overview was presented to the Board of Education in spring 2016 which focused on efforts to enrich students’ experiences through extracurricular activities and opportunities now available with its revised middle school schedule (discussed below in Section II(C)).

Interests and Abilities Conclusion

Prior to the conclusion of the investigation, the District requested to resolve any potential compliance concerns with regard to effectively accommodating the interests and abilities of female students. In order to complete its investigation of this component, OCR would need to conduct further investigative activities such as gathering additional information through data requests and interviews as to the manner in which the District’s annual survey was developed and administered. OCR would also need to further investigate the scope and impact of the informal discussions that happen in the District regarding expanding athletic opportunities. Additionally, OCR would need to interview additional coaches and students to determine whether the District’s current athletic program is currently meeting the interests and abilities of its students. As there remain areas to investigate and the District is willing to resolve these potential concerns, OCR determined it is appropriate to resolve this component with an Agreement pursuant to Section 302 of the *CPM*.

B. Locker Rooms, Practice Facilities, and Competitive Facilities

When assessing compliance with the program component of the Provision of Locker Rooms, Practice and Competitive Facilities, OCR analyzes the following six factors:

1. Quality and availability of 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.

The locker rooms, practice facilities, and competitive facilities used by the District’s interscholastic athletic teams for the 2015-16 school year are identified in the chart below.

| Locker Rooms, Practice Facilities, and Competitive Facilities by Sport | | | |
|---|---|---|--|
| Sport | Locker Room | Practice | Competition |
| Baseball (Middle) | David Allen Memorial Ballpark | David Allen Memorial Ballpark; Northern Oklahoma College | David Allen Memorial Ballpark; Northern Oklahoma College |
| Baseball (HS) | David Allen Memorial Ballpark | David Allen Memorial Ballpark; Northern Oklahoma College | David Allen Memorial Ballpark; Northern Oklahoma College |
| Basketball (Boys, Middle) | 7th: Longfellow MS (Upstairs Gym); 8th: Emerson MS (Upstairs East Gym); Waller MS (Competition) | 7th: Longfellow MS (Upstairs Gym); 8th: Emerson MS (Upstairs Gym) | Waller MS (South Gym) |
| Basketball (Girls, Middle) | Waller MS | Waller MS (North and South Gyms) | Waller MS (South Gym) |
| Basketball (Boys, HS) | Enid HS; Enid Event Center | Enid HS (South Gym) | Enid Event Center |
| Basketball (Girls, HS) | Enid HS; Enid Event Center | Enid HS (North Gym) | Enid Event Center |
| Cheer (Middle) | Harrison ES | Harrison ES | No Competition |
| Cheer (HS) | Harrison ES | Harrison ES | No Competition |
| Cross Country (Boys, Middle) | None | Crosslin Park | Crosslin Park |
| Cross Country (Girls, Middle) | None | Crosslin Park | Crosslin Park |
| Cross Country (Boys, HS) | None | Crosslin Park | Crosslin Park |
| Cross Country (Girls, HS) | None | Crosslin Park | Crosslin Park |
| Football (Middle) | 7th: Enid HS (South); 8th: Selby Stadium (East) | 7th: Enid HS; 8th: Selby Stadium | Selby Stadium |
| Football (HS) | Selby Stadium (Honigsberg Fieldhouse) | Selby Stadium | Selby Stadium |
| Golf (Boys, Middle) | None | Pheasant Run Golf Course | Pheasant Run Golf Course |
| Golf (Girls, Middle) | None | Pheasant Run Golf Course | Pheasant Run Golf Course |
| Golf (Boys, HS) | None | Meadowlake Golf Course | Meadowlake Golf Course |
| Golf (Girls, HS) | None | Meadowlake Golf Course | Meadowlake Golf Course |
| Pom (Middle) | Harrison ES | Harrison ES | No Competition |
| Pom (HS) | Harrison ES | Harrison ES | No Competition |
| Soccer (Boys, HS) | Selby Stadium; Waller MS | Selby Stadium; Waller MS | Selby Stadium |

| Locker Rooms, Practice Facilities, and Competitive Facilities by Sport | | | |
|---|--|--|--|
| Sport | Locker Room | Practice | Competition |
| Soccer (Girls, HS) | Selby Stadium; Waller MS | Selby Stadium; Waller MS | Selby Stadium |
| Softball (Middle) | David Allen Memorial Ballpark; Meadowlake Softball Field | David Allen Memorial Ballpark; Meadowlake Softball Field | David Allen Memorial Ballpark; Meadowlake Softball Field |
| Softball (HS) | David Allen Memorial Ballpark; Meadowlake Softball Field | David Allen Memorial Ballpark; Meadowlake Softball Field | David Allen Memorial Ballpark; Meadowlake Softball Field |
| Swimming (Boys, HS) | YMCA | YMCA | YMCA |
| Swimming (Girls, HS) | YMCA | YMCA | YMCA |
| Tennis (Boys, Middle) | None | 9th Street Courts | 9th Street Courts |
| Tennis (Girls, Middle) | None | 9th Street Courts | 9th Street Courts |
| Tennis (Boys, HS) | None | 9th Street Courts | 9th Street Courts |
| Tennis (Girls, HS) | None | 9th Street Courts | 9th Street Courts |
| Track (Boys, Middle) | None | Enid HS; Selby Stadium | No Home Competitions |
| Track (Girls, Middle) | None | Enid HS; Selby Stadium | No Home Competitions |
| Track (Boys, HS) | Enid HS | Enid HS | No Home Competitions |
| Track (Girls, HS) | Enid HS | Enid HS | No Home Competitions |
| Volleyball (Middle) | Waller MS | Waller MS (South Gym) | Waller MS (South Gym) |
| Volleyball (HS) | Waller MS | Oakwood Activity Center | Northern Oklahoma College |
| Wrestling (Middle) | Emerson MS; Waller MS | Emerson MS | Waller MS (South Gym) |
| Wrestling (HS) | Emerson MS; Waller MS | Lincoln ES | Waller MS (South Gym) |

1. Quality and Availability of Practice and Competitive Facilities

OCR conducted a two-day site visit to inspect the above facilities, and later conducted interviews with coaches and administrators. During the site visit, and as confirmed during interviews, many of the practice and competitive facilities used by boys' and girls' teams are either shared, or functionally identical as in the case of the Enid High School North and South gymnasiums which are mirror images of one another. The facilities ranged from adequate to excellent in the case of the shared/public facilities the District has access to, namely David Allen Memorial Ballpark, Northern Oklahoma College, and the Enid Event Center.

At the time of OCR's site visit, the only significant disparity that OCR observed in the quality of practice and competitive facilities was with respect to the baseball team and softball team's use

of David Allen Memorial Ballpark (the Ballpark), and Meadowland Softball Field (Meadowlake). The Ballpark is a state-of-the-art facility that hosts college baseball competitions, and offers a range of amenities including indoor hitting facilities, concessions, seating for 3,000 spectators, and a turf field. During interviews and during OCR's site visit, the Ballpark was repeatedly mentioned as a top of the line facility. Witnesses also stated during interviews, and during the on-site visit, that the softball teams have access to this facility both for practice and competition, but for competitive and personal choice reasons, the softball teams have opted to primarily use Meadowlake which is an adequate softball field with some amenities including a small locker room, concessions stand, and spectator seating. During its site visit, OCR noted a significant disparity between the Ballpark and Meadowlake facilities. This included OCR's observations that the indoor facility at the Ballpark appeared geared towards the baseball team and its coaches. However, as noted, the District has stated that the softball team has access to the Ballpark and indoor facility, and the softball teams' lack of use of the facility was a function of the softball teams' desire to primarily use Meadowlake. The softball coach stated that each year she has polled her players on where they would like to play their home games, and the consensus has been to use Meadowlake.

During OCR's site visit, the District indicated a desire to purchase a building located on the Ballpark property. Subsequent to the site visit, District personnel confirmed during interviews that the purchase of the building had been made, and the facility will be turned into a softball counterpart to the indoor facility that is currently used primarily by the baseball teams. It is expected that there will be offices for use by the softball coaches, an indoor hitting facility, and locker rooms for the softball teams.

OCR also noted that the District is in the process of other upgrades to its athletic facilities as part of a bond resolution that was passed in February 2016. These upgrades include a new fitness center that when completed will be available to all athletic teams. The District is also in the planning phase of a new gymnasium that will be home to wrestling, basketball, volleyball, pom, and cheer. During interviews, District coaches stated they have had input in the design of the new facility, and indicated that each team will have its own locker room, and offices for coaches.

2. Exclusivity of Use of Facilities Provided for Practice and Competitive Events

To determine whether the District provided the boys' and girls' athletics programs equivalent exclusivity of their practice and competitive facilities, OCR reviewed practice and facility schedules, inspected practice and competitive facilities in person, and interviewed coaches. OCR's review and analysis revealed no disparities between the exclusivity of use of facilities for male and female student athletes, with the possible exception of the use of the indoor facility at the Ballpark, which as noted above, the District is addressing through the addition of a counterpart softball facility. During interviews, coaches were uniform in stating that they worked with their counterpart coaches to ensure equal use of facilities both in duration, and with respect to preferences for day and time of use. One coach told OCR there are occasional issues accessing the Enid Event Center because of other events going on at the private facility, but these issues equally impact the boys' and girls' teams and the coaches coordinate to ensure both teams have equal use of the facility.

3. Availability of locker rooms; and
4. Quality of Locker Rooms

To determine the quality and availability of the locker rooms the District provided the boys' and girls' teams, OCR inspected the locker rooms at each facility, and interviewed coaches. As noted above, during the 2015-16 school year, all of the District's interscholastic athletic teams had designated locker rooms except for Cross Country (Middle and High School), Golf (Middle and High School), Tennis (Middle and High School), and Track (Middle).⁸

During its site visit, OCR inspected, and measured the above locker room facilities and generally found the facilities provided to female and male student athletes to be equivalent. Aside from the previously mentioned disparity between the Ballpark and Meadowlake softball field, which included disparities in the respective locker rooms, for sports that field both male and female teams, OCR had concerns regarding the boys' and girls' high school basketball locker room facilities, and the boys' and girls' soccer locker room facilities. OCR noted the boys' high school varsity basketball locker room at Enid High School included a television and couch, while the girls' high school varsity basketball locker room at Enid High School did not. With respect to the locker rooms for high school soccer, at the time of the site visit, OCR noted that the girls' locker room was of lesser quality than the boys' locker room. However, during interviews, OCR learned that for the 2016-17 season, the girls' and boys' soccer teams have switched locker rooms. Both soccer coaches agreed the girls' team now had access to the superior locker room facility.

For single sex sports, OCR found the locker room facilities for football to be spacious and generally of good quality, although the shower and restroom facilities were inadequate for the size of the football team. OCR noted that the locker room facilities provided to the girls' volleyball team during competition at Northern Oklahoma College were of excellent quality.

5. Maintenance of practice and competitive facilities; and
6. Preparation of facilities for practice and competitive events.

OCR's on-site visit, and interviews of District coaches and administrators revealed no concerns with the maintenance and preparation of the District's various facilities. Facilities and playing surfaces appeared clean, and well kept. Interviewees did not report any concerns with obtaining maintenance of non-District owned facilities, and OCR's inspection revealed these third-party facilities to be of generally excellent quality. With respect to the aforementioned disparity between the Ballpark and Meadowlake softball field, the District works to transform the baseball field into a regulation softball field, which includes a moveable mound, and backstop.

⁸ The District stated that the Golf and Tennis teams do not have locker room facilities, but do have access to change in restrooms at their respective facilities. The Middle School Track program has access to change in the Selby Stadium restrooms.

Program Component Conclusion

Prior to the conclusion of the investigation, the District requested to resolve any potential compliance concerns with regard to this component. In order to complete its investigation of this component, OCR would need to conduct additional investigative activities specifically with respect to the current disparities in the facilities provided to the baseball and softball teams. This would include interviews with softball team athletes, the incoming softball coach, and further data collection on the new softball facility that is being constructed at the site of David Allen Memorial Ballpark. OCR would also need to conduct additional interviews to determine whether the disparities in favor of female athletes such as the girls' high school soccer locker room, and the availability of a college-level facility for the girls' volleyball team have the same relative impact within the program component as the disparities noted between the baseball and softball facilities, and consequently offset each other. As there remain areas to investigate and the District is willing to resolve these potential concerns, OCR determined it is appropriate to resolve this component with an Agreement pursuant to Section 302 of the *CPM*.

C. Scheduling of Games and Practice Time

During the course of OCR's investigation, the District altered its middle school schedule to one that addresses the concerns raised in issue 3. Specifically, prior to the change in the middle school schedule, the last period of the school day (7th) was available to student athletes for practice or competition. However, this allowance was not afforded to the club sports programs at the middle school level, and students not participating in sports. During interviews with District staff, OCR learned that the District beginning with the 2016-17 school year has implemented a new middle school schedule system that permits all students to be released at the same time (after 6th period). Students participating in any sport, including club sports, use the last period for practice and/or competition, while other students are permitted to go home. OCR determined that this revised schedule adequately addresses the concerns raised in issue 3, and treats female and male student athletes equally.

Program Component Conclusion

Pursuant to *CPM* Section 110(o)(1), OCR may close a complaint allegation when the allegation becomes moot and there is nothing further for OCR to investigate and resolve. The Complainant alleged inequities in the scheduling of games and practice times in the middle school program, specifically as it related to the time students participating on club teams were released from school versus the time students on interscholastic teams were released. The Complainant alleged that club sports practice and game times were later in the day because students on club sports teams were required to stay later at school than students participating on interscholastic teams. During the course of OCR's investigation, OCR learned that all middle school students are now released from school at the same time, thus affording students on club teams the same release time as students on interscholastic teams. OCR has determined the revised middle school schedule makes issue 3 moot, therefore OCR is closing issue 3 as of the date of this letter.

III. RESOLUTION

Prior to the completion of OCR's investigation, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *CPM*. On January 31, 2018, the District submitted the enclosed Agreement, which addresses the compliance concerns identified during this investigation. OCR will monitor the implementation of the Agreement. OCR will not close the monitoring of the Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with the regulation.

In accordance with the Agreement, the District agrees to:

- Provide participation opportunities for middle school female and male students that effectively accommodate the athletic interests and abilities of members of both sexes by affording athletic participation opportunities that are either substantially proportionate to each sex's enrollment or by demonstrating that the interests and abilities of female students are fully and effectively accommodated by the District's current athletics program;
- Initiate a survey to administer to the middle school student body to assess indicators of interest and abilities, to determine the existence and/or scope of any unmet athletic interests of females students, and to conduct other periodic assessments of athletic interests and abilities in subsequent years;
- If, through its assessment, the District identifies a sport in which there is sufficient but unmet interest, and if applicable, ability of middle school female students to participate at the interscholastic level, the District will add athletic opportunities until either (1) the District is fully and effectively accommodating the expressed interests and abilities of the middle school female students; or (2) the participation rate for middle school female students is substantially proportionate to their rate of enrollment;
- Create and implement a process and written procedure for requesting the addition of new middle school sports or levels of sports in the District; and ensure the effective communication of the process and procedure to students and staff; and
- Complete a comprehensive assessment of its ongoing capital projects associated with athletics, including, but not limited to, the new high school gymnasium and related facilities, as well as the anticipated softball facility at the site of David Allen Memorial Ballpark.

OCR considers issues 1 and 2 of this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume investigating the complaint.

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, please be advised the complainant 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.

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

OCR appreciates the District’s cooperation during this investigation and interest in affirming its commitment to Title IX. OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXXXXXXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXXXXXXX@ed.gov.

Sincerely,

/s/ Kelli Douglas

Kelli Douglas
Supervisory Attorney

Enclosure