



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

June 1, 2017

XXXXX X XXXXXXX
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XXXXX XXX
XXXXXXXX XXXX, XXXXXXXXXXX XXXXX

Re: Docket # 07161028

Dear Ms. XXXXXX,

On November 9, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Piedmont Public Schools (District), Piedmont, Oklahoma, alleging discrimination on the basis of sex and retaliation. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegations 1 and 2 of this complaint. Allegation 3 is being closed pursuant to Section 303a of the *Case Processing Manual*¹. Details of OCR's determination are set out below.

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 (FFA).
- Title VI of the Civil Rights Act of 1964 (Title VI), 43 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of FFA. The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits recipients of FFA from intimidating or retaliating against individuals who engage in an activity protected under Title VI, including complaining of discrimination or harassment or participating in an OCR investigation. The Title VI regulation prohibiting retaliation is incorporated, by reference, into the regulation implementing Title IX at 34 C.F.R. § 106.71.

As a recipient of FFA from the Department, the District is subject to Title VI and Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

The Complainant alleged that the District:

¹ OCR's Case Processing Manual is online at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.html>.

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

1. operates an interscholastic athletics program that fails to provide benefits, opportunities, and services to female softball team players that are equivalent to those provided to male baseball team players in regard to scheduling of games and practice times in the middle and high school programs;
2. fails to provide benefits, opportunities and services to female softball players that are equivalent to those provided to male baseball team players in the provision of locker rooms, and practice and competitive facilities in the middle and high school programs; and
3. retaliated against a Piedmont Public Schools staff member for engaging in a protected activity (advocating for equal benefits, services and opportunities for female softball team players) by taking adverse employment actions against the staff member.

In the remainder of this letter, the Complainant is referred to as “the Complainant” and the employee alleged to have been retaliated against shall be referred to as “the Coach.” To protect individuals’ privacy, the names of employees, witnesses, and other parties also were not used in the letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion, or whether the evidence is insufficient to support the conclusion.

On January 6, 2016, OCR sent notification letters to the District informing it that this complaint was being opened for investigation. The District’s notification letter included a data request. On January 26, 2016, the District provided OCR with a response to OCR’s data requests. On May 3, 2016, OCR sent the District a supplemental data request. The District provided data in response to OCR’s supplemental data request on June 3, 2016. On April 7, 2016, OCR conducted a site visit and interviewed the high school principal, the athletic director, the head baseball Coach, and the superintendent. OCR sent surveys to students who participated in the District’s softball and baseball programs over the past two years. The surveys asked the athletes to compare the benefits and services provided to the softball teams and to the baseball teams. OCR also interviewed the Complainant and the Coach. On July 7, 2016, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR’s *CPM* to resolve allegations 1 and 2.

Allegation 1

The Complainant alleged that the male baseball players are treated more favorably with regard to use of the practice facilities than are the female softball players. The complainant’s witness, the Coach, stated that when the girls’ practice activities were perceived by District officials as a possible distraction to the boys’ competition or practice, the girls were required to stop practicing.

OCR reviewed copies of the District’s policies regarding the scheduling of practice times. OCR also interviewed the athletic director and baseball coach, and surveyed student athletes who may have been impacted by the alleged practice.

Legal Standard

The legal authority for investigations of athletics program is provided by Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* The regulation implementing Title IX, at 34 C.F.R. Part 106 contains specific provisions for athletics programs at 34 C.F.R. 106.41 and athletic scholarships at 106.37(c). Further clarification of the Title IX regulatory requirements is provided by the Intercollegiate Athletics Policy Interpretation, issued December 11, 1979 (44 Fed. Reg. 7143 *et seq.* (1979)). The Policy Interpretation is designed specifically for intercollegiate athletics. However, its general principles will often apply to club, intramural and interscholastic athletic programs which are also covered by regulation. Interscholastic athletics investigations may be limited to those program components in which a complainant has made allegations. In situations where either through a complaint or a compliance review, the entire interscholastic athletics program is being investigated, the overall approach which reviews the total athletics program may be warranted. However, interscholastic athletics investigations usually do not involve a comparison of whether program components favoring athletes of one sex may be offset by program components favoring athletes of the other sex.

When investigating whether a District provides inequitable benefits as relates to practice times, OCR must consider 1) the number of competitive events per sport, 2) the number and length of practice opportunities, 3) the time of day competitive events are scheduled, 4) the time of day practice opportunities are scheduled, and 5) the opportunities to engage in pre-season and post-season opportunities. The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports. An example of a nondiscriminatory justification for scheduling disparities is where the scheduling of competitive events is limited by lack of competition for that sport in the normal competitive region. An institution is not required to schedule the same number of games or practices for men’s and women’s teams of the same or similar sport. However any differences favoring, for example, men’s teams, should be offset by differences favoring women’s teams in other sports.

Preliminary Findings of Fact

Number of Competitive Opportunities

OCR reviewed the schedules for the boys’ baseball teams and the girls’ softball teams at each competitive level for the 2014-15 and 2015-16 school years. The tables below chart the number of competitive opportunities each team was afforded during those years.

Table 1

Competitive Opportunities during the 2014-15 School Year

Athletic Team	# of Regular Season Games	# of Tournaments
7 th Grade Boys Baseball	13	2
8 th Grade Boys Baseball	14	3
Middle School Girls Softball	14	3

Athletic Team	# of Regular Season Games	# of Tournaments
Freshman Boys Baseball	26	3
Junior Varsity Boys Baseball	28	4
Junior Varsity Girls Softball	14	3
Varsity Boys Baseball	28	4
Varsity Girls Softball	18	4

Table 2

Competitive Opportunities during the 2015-16 School Year

Athletic Team	# of Regular Season Games	# of Tournaments
7 th Grade Boys Baseball	16	3
8 th Grade Boys Baseball	15	3
Middle School Girls Softball	13	3
Freshman Boys Baseball	29	4
Junior Varsity Boys Baseball	28	3
Junior Varsity Girls Softball	8	4
Varsity Boys Baseball	25	5
Varsity Girls Softball	19	3

The Coach told OCR the District allowed the varsity baseball team to go to Florida during spring break of 2016 and to Arizona to play a tournament in 2015. The varsity softball team wanted to go to Denver, Colorado, for a tournament and training camp, but the superintendent and Athletic Director denied the trip. The Coach told OCR the varsity softball team did go to Tahlequah in Eastern Oklahoma in the fall of 2015 and also to a tournament in Durant. The Coach told OCR the varsity softball team was only allowed to participate in competition within a 50 mile radius of Piedmont.

Start Times of Competitive Events

During the 2015-16 school year, the baseball team’s weekday games began between 4:00 pm and 7:00 pm. Weekend games began as early as 12:00 pm. During the 2015-16 school year, middle school and junior high softball games generally begin at 5:00 pm. Varsity softball games generally begin at 6:30 pm. No softball game started after 6:30 pm.

Practice Times

- The Piedmont Public Schools Athletic Handbook states that cooperation between coaching staffs is necessary when scheduling practice times and facilities: “Coaches must be as flexible as possible due to a shortage of practice venues which are also used by non-sports groups for meetings and events. Communication between coaches, building Administration and the Athletic Director is important to keep conflicts to a minimum.” The Handbook reminds athletic staff that a routine check of the master calendar at www.piedmontschools.org and confirmation with the Athletic Department office will help with planning.

- The Athletic Director told OCR that the baseball and softball coaches do all of their own scheduling, while the Athletic Director reviews the schedules to check for conflicts with other activities. The Athletic Director said that he wants to make sure that the Athletic Department is not conflicting with any major school activities. He told OCR that “[w]e want to minimize conflicts where we can.”
- The Baseball Coach told OCR that baseball players are usually done with practice by 5:30 p.m. but, the junior high softball players will sometimes practice in the evening.
- The Coach told OCR that the softball players are not given the same ability to practice and use the night time lights as the baseball team.
- In its response to this complaint, the District stated that for both school years, high school softball usually begins to practice around August 1 and continues until the middle of October, depending upon post-season games. Once school starts, practice is every school day unless there are games. The District said that high school baseball usually begins around February 1 and continues until the middle of May, depending upon whether the team is involved in post-season games.
- The District outlined the 2014-15 school year middle school practice seasons as follows:
 - 7&8 grade softball - August 9, 2014 to October 2, 2014
 - 7th grade baseball – February 19, 2015 to April 27, 2015
 - 8th grade baseball - February 19, 2015 to May 2, 2015
- The District said that for the 2015-16 school year, middle school practices were or would be scheduled as follows:
 - 7&8 grade softball – August 3, 2015 to September 29, 2015
 - 7&8 grade baseball – February 15, 2016 to unknown

Legal Analysis

In investigating the scheduling of games and practices time component, OCR compares for men’s and women’s teams of the same or similar sport, the number of games, the days and times of games, and the number of practices and the days and times of practices. OCR considers whether any existing differences result in a disparity, and whether any disparity constitutes a significant disparity.

The District’s baseball program provided more competitive opportunities than the softball program. The varsity baseball team competed in 10 more regular season games than the varsity softball players during the 2014-15 SY and in 6 more regular season games than varsity softball during the 2015-16 SY. The junior varsity baseball players competed in 14 more regular season games than junior varsity softball in 2014-15 and 20 more games than junior varsity softball in 2015-16. The middle school baseball teams had on average 2.5 more competitive opportunities in the 2015-16 school year than the middle school softball team. Also, the varsity baseball team competed in tournaments outside of the home state in 2014-15 as well as in 2015-16, but the varsity softball team did not. The Coach told OCR that the softball players wanted to go to

Denver, Colorado for a tournament and training camp in 2014 and in 2015, but the request was denied by the District.

The Coach told OCR that the softball players are not given the same ability to practice and use the night time lights as the baseball team. The baseball coach told OCR that the baseball players are usually done with practice by 5:30 p.m. but, the junior high girls will sometimes practice in the evening. The Athletic Director told OCR that the baseball and softball coaches do all of their own scheduling, while the Athletic Director reviews the schedules to check for conflict with other activities.

Prior to the completion of OCR's investigation, the District submitted a signed Agreement (copy enclosed) on May 31, 2017 that, when fully implemented, will address the allegation 1 of this complaint. The Agreement requires the District to create a plan to remedy inequities between the benefits and services provided to the District's softball program and its baseball programs, to ensure teams the softball and baseball teams are afforded the equivalent periods of time for daytime and evening practices, and to ensure that softball players and baseball players have the same number of opportunities to participate in competitive play and receive equal funding for travel and per diem, athletic camps and tournament play. Please consult the Agreement for further details.

Allegation 2

The Complainant alleged that the District fails to provide benefits, opportunities and services to female softball players that are equivalent to those provided to male baseball team players in the provision of locker rooms, and practice and competitive facilities in the middle and high school programs.

Legal Standard

The Policy Interpretation lists six factors to assess in determining compliance for this component of a Title IX athletics investigation. OCR considers 1) the quality and availability of the facilities provided for practice and competitive events, 2) the exclusivity of use of facilities provided for practice and competitive events, 3) the availability of locker rooms, 4) the quality of locker rooms, 5) the maintenance of practice and competitive facilities, and 6) preparation of facilities for practice and competitive events.

Preliminary Findings of Fact

- The District provided OCR with an accounting of the baseball and softball accounts for the 2014-16 fiscal years. The accounting includes receipts, encumbrances, and checks written for each account. There is a purchase order number and description attached to each encumbrance, receipt or check. Many of the descriptions only provide a name or vendor name. In a limited number of instances, the description provides more detail, such as "locker rooms" or "field maintenance."

- OCR researched the vendor names listed where possible to determine what type of service or good the vendor provided. OCR also searched the accounting for expenditures that appeared to be related to field maintenance, locker room maintenance, and athletic equipment. In addition to summarizing expenditures for those items, the following tables show the total encumbrances/expenditures for each program and the programs’ encumbrance to the “general fund.”

	Baseball	2014	Softball
Total Encumbrances	\$69,615.71		\$24,198.84
Equipment	\$15,100.00		\$2,896.08
Field Maintenance	\$1,276.96		\$500.00
Locker room	--		--
General Fund	\$1000.00		\$796.62

	Baseball	2015	Softball
Total Encumbrances	\$79,793.39		\$25,484.81
Equipment	\$2,798.97		\$3665.90
Field Maintenance	\$1795.36		\$3766.00
Locker room	--		--
General Fund	\$9,419.60		\$0.00

	Baseball	2016	Softball
Total Encumbrances	\$112,303.44		\$41,389.28
Equipment	\$6394.00		\$2600.00
Field Maintenance	\$9019.80		\$2253.28
Locker room	\$1702.15		\$0.00
General Fund	\$301.46		\$301.46

- The District’s total expenditures for equipment for the baseball team from 2014 to 2016 equaled \$24,292.97. The District’s total expenditures for equipment for the softball team from 2015 to 2016 equaled \$9,161.98.
- The District’s total expenditures for baseball field maintenance from 2014 to 2016 equaled \$12,092.12. The District’s total expenditures for softball field maintenance from 2014 to 2016 equaled \$6,519.28. Also, the District paid for the baseball field dirt in exchange for the baseball team cleaning the stands after football games. The softball team players were not given a similar opportunity to work for their field dirt. The Coach told OCR that he was not aware of the arrangement between the District and the baseball team.
- The District’s total expenditures for the baseball locker room from 2014 to 2016 equaled \$1702.15. The District’s total expenditures for the softball locker room from 2014 to 2016 was \$0.00.

- The Superintendent said booster clubs play a supportive role for the teams, and each sport uses their club in different ways. He said that the type of role the club plays is dependent upon its members and how they choose to contribute.
- The Superintendent said that there is not a record of contributions, or a formalized procedure for soliciting or utilizing booster club contributions. The Superintendent said the District has chosen not to be affiliated with booster clubs.
- When asked whether the District considers whether a boys team has a benefit, such as equipment, that a girls team does not when making a decision to provide a benefit, the Superintendent responded that the District might look at “how the boys team got it.”
- Softball and baseball each have only one field. Both programs use their field for both practice and competition.
- Each field is lighted and has an electronic scoreboard in the outfield. The softball field lights are mounted on wooden poles. The baseball field lights are mounted on metal poles and have more individual lights per pole. The District added the new lights to baseball field when the old wooden poles were destroyed by a storm.
- OCR conducted an onsite visit to view the baseball and softball facilities, accompanied by a District staff member who was knowledgeable about the facilities.
- OCR viewed the inside and outside of the baseball press box. It was spacious and well-constructed, with newer equipment and furnishings. OCR was not able to enter the softball press box, and so could not determine whether it was similarly equipped to the baseball press box. From the outside, the softball press box appeared to smaller and more poorly constructed compared to the baseball press box.
- OCR inspected the women’s and men’s restrooms at each of the baseball and softball facilities and determined they were not similarly equipped. The bathrooms for the baseball facility are cleaner, appear to be more updated, and the stall doors offer more privacy to users.
- OCR inspected the baseball and softball coach’s office. The softball coach’s office, which takes up one half of the building holding the high school softball locker room, is significantly smaller than the baseball coaches’ office.
- OCR toured the softball and baseball facilities and determined that the high school softball team’s locker room does not have enough space to accommodate the number players on the team. The girls have to share lockers. The boys’ locker room is more spacious and more comfortable, has the capacity to serve a greater number of players, and provides individual, secure lockers.
- The middle school softball and baseball players share a locker room.

Legal Analysis

OCR's analysis of the locker rooms, practice and competitive facilities program component includes several factors. OCR determines whether any policies, procedures or criteria used for allocating locker rooms, practice and competitive facilities differ on the basis of sex. OCR compares the quality and availability of practice and competitive facilities and locker rooms for men and women. The analysis also includes a comparison of the number of teams that have exclusive use of practice and competitive facilities and locker rooms. Finally, OCR compares the maintenance and preparation of practice and competitive facilities for the men's program with the maintenance and preparation of practice and competitive facilities for the women's program.

Once comparisons have been made for all the factors within the program component, OCR determines whether the differences for each factor or all or the factors combined have a disparate impact on one sex. If so, and the differences cannot be explained by nondiscriminatory justifications, a disparity exists. The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports.

Prior to the completion of OCR's investigation, the District submitted a signed Agreement (copy enclosed) on May 31, 2017 that, when fully implemented, will address the allegation 1 of this complaint. The Agreement requires the District to create a plan to remedy inequities between the benefits and services provided to the District's softball program and its baseball programs, to ensure that softball players and baseball players receive equal funding for travel and per diem, athletic camps and tournament play, and to provide training to coaches and athletic staff regarding the District's obligations pursuant to Title IX. Please consult the Agreement for further details.

Allegation 3

The Complainant alleged that the District retaliated against the Coach for engaging in a protected activity (advocating for equal benefits, services and opportunities for female softball team players) by taking adverse employment actions against him. Based on its review of the data provided by the Complainant and the District, and the interviews described above, OCR has made the following findings and determination.

Legal Standards

The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits recipients of FFA from intimidating or retaliating against individuals who engage in an activity protected under Title VI, including complaining of discrimination or harassment or participating in an OCR investigation. The Title VI regulation prohibiting retaliation is incorporated, by reference, into the regulation implementing Title IX at 34 C.F.R. § 106.71.

When OCR investigates a retaliation allegation, it uses a four-part analysis. A *prima facie* case of retaliation is established by showing that: (1) an individual participated in a protected activity; (2) the recipient was aware of the protected activity; (3) the recipient took adverse

action(s) against the individual contemporaneously with or subsequent to the individual’s participation in the protected activity; and (4) there was an inferable causal relationship between the adverse action and the individual’s participation in the protected activity. Once OCR has established a *prima facie* case of retaliation, the recipient may proffer a legitimate non-retaliatory reason for its action. OCR then analyzes the evidence to determine whether the recipient’s proffered reasons are a mere pretext for retaliation.

Factual Findings

In reaching a determination on Allegation 3, OCR considered information submitted by both the Complainant and the District, including policies and procedures, handbooks and rules for extracurricular activities, and written communications between the Coach and the District. OCR interviewed the Complainant on December 10, 2016, and interviewed the Coach on December 15, 2015, April 15, 2016 and April 26, 2016. The legal and factual bases for OCR’s determination are set forth below.

X PARAGRAPH REDACTED X

Analysis and Conclusion

OCR reviewed the facts relevant to allegation 3 to determine whether they established a *prima facie* case of retaliation by showing that: (1) the Coach participated in a protected activity; (2) the District was aware of the protected activity; (3) the District took adverse action(s) against the Coach contemporaneously with or subsequent to his participation in the protected activity; and (4) there was an inferable causal relationship between the adverse action and the Coach’s participation in the protected activity.

A preponderance of the evidence established that the Coach engaged in a protected activity about which the District was aware. A “protected activity” is one in which a person 1) takes action to oppose any practice made unlawful by the laws enforced by OCR, 2) makes a charge, testifies, assists or participates in an investigation, proceeding or hearing, or 3) otherwise asserts rights protected by the laws OCR enforces.

X Paragraph Redacted X

A preponderance of the evidence further established that the District took an adverse action against the Coach subsequent to his protected activity. The Coach was suspended and the Superintendent did not allow the Coach to rescind his resignation from his coaching position.

Although there is no direct evidence that the suspension and refusal to allow the Coach to rescind his resignation was related to the Coach’s advocacy for equal conditions XXX XXX XXXXXXX XXXX, and the temporal proximity of the adverse action to the protected activity was attenuated, OCR inferred a causal connection for purposes of assessing whether or not there was a *prima facie* case of retaliation. OCR made this inference based on the extent and persistence of the Coach’s advocacy. OCR concludes a preponderance of the evidence

established a *prima facie* case of retaliation. OCR then reviewed whether the District had a legitimate, nondiscriminatory reason for its adverse action against the Coach.

The District presented a legitimate non-discriminatory reason for the suspension and not allowing the Coach to rescind his resignation.

X Paragraph Redacted X

X Paragraph Redacted X

X Paragraph Redacted X

Because the District had a legitimate, nondiscriminatory reason for its action, which was not pretextual, OCR finds that the District did not retaliate against the Coach as alleged in the complaint. Therefore, OCR is closing Allegation 3 of the complaint as of the date of this letter.

OCR considers all of the allegations 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 the investigation with regard to Allegations 1 and 2 of 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 that the individual subjected to such treatment may file a 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. If 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.

If you have any questions, please contact XXXXX XXXXX, Equal Opportunity Specialist, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov. You may also contact XXXXXX XXXXXXXXXXXX, Attorney, at (816) 268-XXXX or email at XXXXX.XXXXXXXXXXXXX@ed.gov.

Sincerely,

/s/ J. Earlene Gordon

J. Earlene Gordon
Supervisory Attorney

Enclosure

cc: Joy Hofmeister, State Superintendent of Public Instruction