



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 14, 2017

Dr. Walt Cooper
Superintendent
Cheyenne Mountain School District 12
1775 LaClede Street
Colorado Springs, Colorado 80905

Re: Cheyenne Mountain School District #12
OCR Case Number: 08-17-1139

Dear Dr. Cooper:

On January 27, 2017, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint against the Cheyenne Mountain School District (District). The Complainant alleged that the District discriminated on the basis of sex in its interscholastic athletics program at the Vanguard School (School). Specifically, the Complainant alleged that the School fails to provide equal athletic opportunities to the girls' basketball team in the following areas: (1) scheduling of games and practice times; (2) dining facilities; (3) medical services; and (4) publicity.

OCR began its investigation of this complaint under the authority of 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. The District receives Department funds, is a public education system, and is therefore subject to the requirements of Title IX and its implementing regulation.

Based on the complaint allegations, OCR investigated whether the District discriminated on the basis of sex by failing to provide equal athletic opportunities to the girls' athletic teams in the following areas: (1) scheduling of games and practice times; (2) dining facilities; (3) medical services; and (4) publicity.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR that it was amenable to resolving the complaint in this manner. OCR and the District entered into the attached agreement to resolve sub-allegations (1), (3), and (4) of the complaint. Accordingly, OCR did not complete its investigation of sub-allegations (1), (3), and (4) of the complaint or reach conclusions regarding the District's compliance with Title IX with regard to these sub-allegations. Based on information that we learned during the investigation of this case (discussed in greater detail below), we are administratively closing sub-allegation (2).

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the sub-allegations are summarized below.

Legal Standards

The Title IX regulations, at 34 C.F.R. § 106.41, provide that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any intercollegiate athletics offered by a recipient of federal financial assistance, such as the District and School here, and no recipient shall provide any such athletics separately on such basis. As a means of assessing compliance under the regulations, OCR follows the Policy Interpretation issued by the Department on December 11, 1979, 44 Fed. Reg. 71413, *et seq.* (1979).

In its investigation, OCR examined whether the School's Athletic Program provides equitable (1) scheduling of games and practice times, (2) dining facilities, (3) medical services, and (4) publicity (pursuant to the Title IX regulations at 34 C.F.R. § 106.41(c)(3), -(9), -(8), and -(10), respectively). To that end, we reviewed the District's data response including coach and athlete surveys, and also interviewed you and the School's Director of Operations.

OCR's preliminary investigation showed the following:

- Scheduling of Games and Practice Times: The Complainant alleged that the girls' high school basketball team had to practice after the boys, with the boys practicing from 4:30 to 6:00pm and girls from 6 to 8pm. On Fridays, when the School dismisses early, the boys practice from 1:30 to 3:00 pm and girls from 3:30 to 5:00pm. It is undisputed that the School has two facilities for the basketball games: a Main Gym and a smaller gym called "The Box." The Complainant alleged that most girls' practices are held in the Main Gym; however, if the junior high school had a competitive game, the girls practice in The Box to avoid conflicts.
 - Game times are often dictated by external factors (leagues, other schools, etc.). Home games are scheduled based on facility space. With the exception of tennis matches (see below), OCR found no differences regarding the scheduling of boys' and girls' game times.
 - Junior high and high school basketball are the only practice schedules that require planning; no other sports (Volleyball, Soccer, Cross Country, Track, and Tennis) have conflicts with practice times.
 - The girls' high school basketball coach for the 2016-17 school year requested a later daily practice time to accommodate his work schedule as his full-time employment was not with the School.
 - To plan practice times, the School notes the schedules for all home and away games, and then looks at the available remaining times, with input from all coaches and accounts for each coach's work schedule, since not all coaches are School employees.
 - While the 2016-17 high school girls' basketball coach was an outside employee whose work schedule required later practice times, the 2015-2016 high school

- girls' basketball coach was a School employee, so the boys and girls practices were more even regarding early and late practice times during that season.
- OCR's review of practice times established that the girls' junior high and high school basketball teams each had scheduled time in The Box, whereas neither boys' basketball team did. Instead, the boys' basketball teams held scheduled practice times in the main gym. The boys' high school team practiced from 4:30-6:30pm in the Main Gym; the girls' high school team practiced from 6-6:30pm in The Box and from 6:30-8pm in the Main Gym.
 - The School does not have tennis courts so the boys and girls tennis teams have used a nearby park for practices. Although the boys and girls teams use the same public courts, sharing the courts with the public has not been an issue for the boys' tennis team who play in the fall season; however this has been an issue for the girls' tennis team during their spring season.
- Medical Services: The Complainant alleged that the girls' basketball teams received two Colorado High School Athletic Association (CHSAA) violations in approximately January 2017, requiring them to forfeit some games. The Complainant alleged that the Athletic Director more carefully reviewed the boys' physicals but not does not properly track the girls' physicals.
 - The School has agreements with local medical providers applicable to all grade 7-12 athletes, (1) with a local physician to provide physicals at school once a year for a fee, and (2) with a local sports pediatric clinic to provide baseline concussion testing, free of charge, with both at-school and at-clinic opportunities. The same provider also occasionally attends School sporting events and has provided at-game treatment to athletes; he does so voluntarily and is not paid, requested, or scheduled by the School.
 - The girls' high school varsity and junior varsity basketball teams were required to forfeit a total of 16 games as a result of two separate CHSAA violations, one regarding an incident with concussion protocol and another involving an outdated physical.
 - The concussion incident occurred over the course of two away games in January 2017 when a junior varsity player fell and hit her head during a junior varsity game; she was played in a varsity game later the same day, and in junior varsity and varsity games the following day. When the issue was discovered, the School self-reported to CHSAA, which ruled that both games needed to be forfeited and that the head girls' basketball coach would be suspended for two games.
 - An expiration date was missed when a junior varsity girls' basketball player turned in an expired physical at the beginning of the season, but the School did not realize it until February 1, 2017, and self-reported to CHSAA. The penalty imposed by CHSAA for having an ineligible player play in the 14 games that had occurred was to forfeit them all.
 - Publicity: The Complainant alleged that the high school basketball game program, which includes both the boys' teams and the girls' teams, includes the height of each player for the boys but not the girls. The Complainant further alleged that the cheerleaders and

mascot had only attended and cheered for the boys' team, and after parents complained, the cheer team participated in some girls' games.

- The 2016-17 school year was the first year the School had girls' cheerleading in six years, and the first year for the School's mascot. The team cheered at the high school boys' and girls' basketball home/away games in town, but did not travel to far away league games due to transportation limitations. The mascot schedule was based on the schedules of the two students who volunteered, and the mascot cheered for most of the home games but none of the away games.
- The School does not have written policies for publicity services. The Athletics Department disseminates information on an as-needed basis.
- The School's Communications Coordinator is in charge of posting information on Facebook; gathering articles for the School's quarterly publication, *The Vanguard Voice*; and sending emails (eBlasts) to all parents every Friday with everything parents need to know about what's happening at the school (for which School leaders provide content). The School's website, managed by its Webmaster, includes sports schedules, team pages, and other information pertinent to sports.

Resolution and Conclusion

Dining Facilities. The Complainant also alleged that the boys' junior varsity and varsity basketball teams eat their pre-game meals in the cafeteria next to the gym, while the girls' teams must hike down a hill at night in a dangerous neighborhood to a modular classroom. The Complainant further alleged that after complaints, the School arranged for the girls to eat in the teacher's lounge, but the room is not large enough to sit an entire team at the same time.

Our preliminary investigation revealed that team meals are not a school-sponsored activity, but rather, driven and hosted by the teams and the parents of those teams. The boys' teams hold their dinners in The Box, which also serves as the boys' locker room on game days, since they are required to vacate their own locker room to accommodate visiting teams. The Box also serves as the student cafeteria for the School. At the same time, after concerns were raised during the 2016-17 school year regarding the safety of the neighborhood surrounding the girls' teams' dining facility, the girls' teams began eating their team meals in the facility immediately across from the gymnasium. The girls' teams eat in the teacher's lounge, which has a large table, ten to twelve chairs, a sink, electrical outlets, a bathroom, and dinnerware including silverware.

We have determined that the District resolved this sub-allegation after complaints prompted the School to allow the girls' teams to eat in the teacher's lounge.¹ We find that both The Box and the smaller teacher's lounge are comparable, and the boys' and girls' basketball teams are therefore being treated equitably. OCR will administratively close an allegation if OCR determines that there are no current allegations appropriate for further resolution. Based on the information that we obtained, OCR finds that there was no present inequity with respect to the provision of dining facilities for the teams. Consequently, we are administratively closing the dining facilities sub-allegation of this complaint.

¹ This change occurred prior to the Complainant filing the OCR complaint.

On June 28, 2017, the District indicated its interest in voluntary resolution of the remaining allegations. As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation the District entered into an agreement to resolve sub-allegations (1), (3), and (4) of the complaint. The agreement requires the School to do the following:

- Develop its practice schedules to ensure that boys and girls in all levels of basketball at the middle and high school have equivalent opportunities for convenient practice times.
- Develop a competition schedule to ensure that the boys' and girls' varsity basketball teams have an equivalent amount of competitions during "prime time" (e.g. 7:30 or 8:00 p.m., rather than 5:00 p.m.) during the 2017-2018 season.
- Assess the basketball programs' practice and schedule times to ensure that they are fair and equitable, and each team has exclusive use of the main gym during their practice times. To that end, tent, the School has hired a permanent basketball coach for the girls' varsity basketball team. Her work schedule will allow her to alternate between early and late practices.
- Locate and rent a facility that will allow the girls' tennis team exclusive use of tennis courts during their practices and matches.
- Ensure that all athletes' physical exam clearances are current prior to their participation on an athletic team.
- Ensure that the athletic director and all team head and assistant coaches are knowledgeable of the Colorado High School Athletic Association's rules and guidelines regarding concussion procedures.
- Provide annual training to the athletic director on the School's Administration for Sports Physicals policies and procedures.
- Provide annual training to the athletic director and all team head and assistant coaches at the middle and high school on the Colorado High School Athletic Association's rules and guidelines regarding concussion procedures.
- Complete an assessment of publicity services that was provided for all interscholastic athletic teams during the 2016-2017 school year. If the School determines that publicity services were not comparable for the boys' and girls' athletic teams, the School will develop and implement a plan to ensure female and male interscholastic athletic teams are provided with comparable publicity resources.

Since the District agreed to voluntarily resolve sub-allegations (1), (3), and (4), OCR did not complete its investigation or reach conclusions regarding the District's compliance with Title IX with respect to these sub-allegations. Specifically, OCR did not conduct interviews of School staff outside of the Director of Operations, and we did not conduct an in-depth analysis of the evidence regarding sub-allegations (1), (3), and (4). We will monitor the District's implementation of the agreement.

This concludes OCR's investigation of the complaint. Our letter should not be interpreted to address the District's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying you concurrently.

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 routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact Rachel Phillips-Cox at 303-844-4559 or by email at Rachel.Phillips-Cox@ed.gov.

Sincerely,

/s/

Stephen Chen
Program Manager

Enclosures – Resolution Agreement