



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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October 27, 2021

Mr. Reid Newey, Superintendent
Davis County School District
45 East State Street
Farmington, Utah 84025

Sent via email ONLY to rnewey@dsdmail.net

Re: Davis County School District
OCR Case Number: 08-21-1240

Dear Superintendent Newey:

We write to inform you of the resolution of the above-referenced complaint, filed on May 6, 2021, with the Office for Civil Rights (OCR) of the U.S. Department of Education ("Department"), alleging that the Davis School District ("District") discriminated on the basis of sex and disability. Specifically, the Complainant alleges that the District discriminates against female athletes at Viewmont High School (High School) by failing to:

- provide the girls' softball team equal opportunities in the following components: locker rooms, practice and competitive facilities, and equipment and supplies; and,
- respond to complaints that parents at the High School raised in March 2021 regarding locker rooms, practice and competitive facilities, and equipment and supplies.

The Complainant also alleged that the District discriminates against people with disabilities because the routes to the softball field located at Bountiful Junior High School are not accessible to people with mobility disabilities.

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibits discrimination based on disability in any program or activity operated by recipients of federal funds; Title II of the Americans with Disabilities Act of 1990 ("Title II"), and its implementing regulation, at 28 C.F.R. Part 35; and Title IX of the Educational Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in activities and programs that receive Federal financial assistance from the U.S. Department of Education. As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

OCR opened an investigation of the allegations and sent the Recipient a data request on June 30, 2021. On August 13, 2021, the District expressed an interest in taking voluntary action to resolve the

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

Complainant's allegations. On August 30, 2021, the District provided OCR with a data response. OCR determined that it was appropriate, pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), to resolve the allegations with an agreement before completing a full investigation. On October 13, 2021, OCR sent the Recipients a proposed Resolution Agreement ("Agreement"). The District sent OCR a fully executed Agreement on October 20, 2021. Enclosed is a copy of the signed Agreement.

Legal Standards

The Section 504 regulation, at § 104.21, states that no individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by people with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance. The Title II regulations contains a similar prohibition at § 35.149.

The Title IX regulation, at 34 C.F.R. § 106.41(a), states, "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 interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis." The Title IX regulation, at 34 C.F.R. § 106.41(c)(7), requires a recipient to provide equal athletic opportunities for members of both sexes in the provision of locker rooms and practice and competitive facilities and equipment and supplies. OCR's *Intercollegiate Athletics Policy Interpretation*¹ (Policy Interpretation) requires OCR to use an overall approach when investigating intercollegiate athletics programs. OCR uses an equivalency standard in assessing compliance with the athletics provisions of Title IX. Under an equivalency standard, identical benefits, opportunities, or treatment are not required as long as the effect of any differences in the overall athletics program are negligible. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the District could still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors, such as the unique aspects of particular sports or athletic activities.

Background

The Viewmont High School softball team practices and competes at the softball facility located at Bountiful Junior High School (Bountiful). Both schools are part of the Davis School District. The softball facility at Bountiful is located less than one mile from the High School. Bountiful was constructed in 1959.

Allegation Details from the Complainant

The Complainant alleged that during the 2020-2021 school year, Bountiful did not allow the softball team or patrons access to their restrooms during practices or games. He also alleged that the field conditions at Bountiful were in disrepair; and that the responsibility to monitor the water sprinkler system was placed on parents and softball coaches. The Complainant further alleged that in contrast to the boys' baseball team, the District did not provide the girls' softball team with sufficient equipment or uniforms; and that the softball coach had to cut potential participants based on the number of available team uniforms. The Complainant also informed OCR staff that a District

¹ The Policy Interpretation is available at <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.

administrator previously determined that the route from the parking lot at Bountiful to the designated accessible sidewalk at the softball facility was not accessible to people with disabilities because the curb at the parking lot did not provide an access point.

Factual Findings

Provision of Locker Rooms, Practice and Competitive Facilities, and Equipment and Supplies

During our investigation, we reviewed the District's data response. The data response included documents and statements from the Athletic Director and softball coach. The District reported that each team is provided with a monetary budget that coaches use at their discretion. However, these budgets are not typically used to purchase uniforms, instead coaches use the funds to purchase equipment or improve a team's facilities. OCR learned that the Viewmont High School Athletic Department does not provide funding for team uniforms. Instead, each team is responsible for purchasing uniforms either through individual team fundraising efforts or by requiring each participant to purchase their own uniform. Based on this information, OCR determined that it is a standard practice that all District teams are responsible for their uniform purchases. During a rebuttal interview, the Complainant stated that he was unable to dispute what funds are used to purchase team uniforms.

With respect to the Complainant's allegation that the softball coach cuts players based on the availability of uniforms, the softball coach reported to OCR that she does not determine team cuts based on uniform availability, but rather makes a decision to select a participant based on their skill level. During a rebuttal interview, the Complainant clarified that choosing the number of softball players based on uniform availability had occurred in previous school years. However, he agreed that the current coach selects softball participants based on their skill level. OCR also learned that prior to its involvement, the softball coach initiated a purchase agreement for new softball uniforms for the upcoming 2022 season.² Based on the totality of the facts as presented by the District and the Complainant, OCR found insufficient evidence to determine that the District failed to comply with the component of equipment and supplies specific to the provisions of practice equipment and uniforms as alleged.

During OCR's investigation of the provision of locker rooms, practice and competitive facilities, OCR identified a concern that the girls' softball team may not have access to restrooms while the softball facility at Bountiful was in use. OCR also identified a concern that the girls' softball facilities may be inferior to the boys' baseball facilities and other athletic facilities at the High School and that additions, improvements, and repairs may be required to ensure that the facilities are comparable. OCR further identified a concern that the District may have placed the responsibility to maintain the softball field at Bountiful on parents and softball coaches by making parents and softball coaches responsible for ensuring that the water sprinkler system at Bountiful was working properly.

OCR initially identified a concern with the designated accessible route from the parking lot to the softball facility at Bountiful. However, OCR later learned that the District identified the need to modify the route prior to OCR's involvement and during OCR's investigation modified the route to ensure that it is accessible to people with mobility impairments.

² OCR suggests that the District review Viewmont High School's Fundraiser Plan to ensure that the Plan includes a section that describes how the District will supplement a team's uniforms needs absent individual team fundraising efforts and that the funds are distributed equitably between boys' and girls' teams.

The District requested a resolution prior to the conclusion of OCR's investigation. The District informed OCR staff that prior to OCR's involvement, the District had developed a plan to address the concerns raised in the complaint and identified by OCR during our investigation.³ Based on a review of the District's plans, OCR determined that when completed, the District will address the concerns regarding the component of locker rooms, practice and competitive facilities, specific to the availability of restrooms, and the quality and maintenance of the softball field located at Bountiful Junior High School. The plans are incorporated into the Agreement. OCR also determined that the District has taken steps to address the accessibility concerns at the softball facility. During the monitoring of the Resolution Agreement, OCR will ensure that the District's modifications to the designated accessible route comply with the 2010 ADA Standards for Accessible Design.

Failure to Respond to a Title IX Complaint

OCR will dismiss an allegation when it is determined that an allegation fails to state a violation. Initially, the Complainant alleged that the District failed to respond to a formal complaint that contained the same or similar allegations that were raised in the OCR complaint. However, the Complainant and the District confirmed to OCR staff that a formal complaint was not submitted to the District. Therefore, OCR is dismissing this allegation pursuant to Section 108(a) of OCR's CPM effective the date of this letter.

Resolution Agreement

When the Agreement is fully implemented, the outstanding allegations will be resolved consistent with the requirements of Section 504, Title II, and Title IX and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the District. OCR will promptly provide written notice to the District of any deficiencies with respect to the implementation of the Agreement terms and will require prompt actions to address such deficiencies. The Complainant will be copied on OCR's monitoring letters. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the allegations and should not be interpreted to address the District's compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

Please note that the Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that 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, the individual may file a complaint alleging such treatment.

This letter sets forth OCR's determination in an individual 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.

³ After the District signed the Resolution Agreement, it also committed to upgrading the batting cage to a comparable bullpen. OCR will monitor this Action Item via the terms of the Agreement.

Under the Freedom of Information Act, releasing this document and related correspondence and records upon request may be necessary. If OCR receives such a request, OCR will seek to protect, to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy.

Thank you for the District's prompt attention to this matter and cooperation. If you have any questions or concerns, please contact XXXXX, Equal Opportunity Specialist, at XXXX or XXXXX.

Sincerely,
/s/
XXXX
Designated Team Leader

Attachment: Resolution Agreement

cc: XXX, University Legal Counsel

(without attachment) Sydnee Dickson, State Superintendent of Public Instruction
(by email only at sydnee.dickson@schools.utah.gov)