



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310
DENVER, CO 80204-3582

REGION VIII

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March 24, 2023

Superintendent Thomas Gregory
Academy School District 20
Education and Administration Center
1110 Chapel Hills Dr.
Colorado Springs, CO 80920

By email only to superintendent@asd20.org

Re: OCR Complaint No. 08-22-1614
Academy School District 20

Dear Superintendent Gregory:

On September 26, 2022, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against Academy School District 20 (District). The Complainant alleged that the District discriminated based on sex when:

1. The football team's booster club¹ fundraising resulted in discrimination against females in athletics at Pine Creek High School (the School) specific to (a) locker rooms, (b) equipment and supplies, (c) travel and per diem allowances specific to modes of transportation, (d) medical and training facilities and services, specific to availability of medical personnel, athletic trainers, and assistants, and (e) support services.
2. The District refused to let female team managers attend the football team's field trip to Las Vegas.

The Complainant also alleged that the District retaliated against her when:

3. The District refused to let her volunteer on the football team's field trip to Las Vegas.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation at 34 Code of Federal Regulations Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit

¹ In the course of its investigation, OCR learned that the booster club is an independent nonprofit organization that does not receive federal financial assistance from the Department.

discrimination on the basis of disability by recipients of federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

I. Summary of Investigation

On January 31, 2023, OCR opened the allegations for investigation in accordance with OCR's *Case Processing Manual* (CPM). OCR's investigation included interviewing the Complainant, reviewing information, records and data from the District, and reviewing emails from the Complainant. As explained below, prior to completion of OCR's investigation, the District expressed an interest in voluntarily resolving the complaint and signed the enclosed Resolution Agreement (Agreement) under Section 302 of the CPM to address the complaint allegations.

II. Factual Findings

The School is one of ten high schools in the District and has an enrollment of approximately 1,800 students.² The School's data response states that its 21 interscholastic athletics sports programs were comprised of approximately 520 male student-athletes and 353 female student-athletes during school year (SY) 2021-2022.

A. Athletics Program

The School has separate male and female 1) physical education (PE) locker rooms; and 2) varsity athletic locker rooms. Lockers are not assigned. Instead, athletes can choose a varsity athletic locker or PE locker while their sport is in season.³ The male PE locker room has 22 more lockers and 152 additional square feet than the female PE locker room.⁴ The male varsity athletic locker room has 51 full lockers, whereas the female varsity athletic locker room has 92 half lockers and 29 full lockers. Based on photographs provided by the District, the male locker rooms show more deterioration and less cleanliness. The male PE locker room does not have doors on bathroom stalls or any mirrors, in response to vandalism. The District did not provide information regarding the vandalism and whether it remains a concern.

Most athletic equipment is monitored on an annual basis and replaced when wear and tear, product degradation, or broken or damaged equipment causes a safety concern. There is no policy that specifies when to purchase equipment. Required purchases occur when warranties,

² Available: National Center for Education Statistics (2021-2022 school year).

https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?Search=1&ID=080192001645

³ There is an exception for the football team. Due to the size of the team, the junior varsity team and underclassman utilize the PE locker room, whereas upperclassmen use the varsity athletic locker room.

⁴ The male PE locker room has 200 small lockers, 90 half lockers, 234 double half lockers, 6 full lockers, and is approximately 1,322 square feet. The female PE locker room has 250 small lockers, 90 half lockers, 168 double half lockers, and is approximately 1,170 square feet.

legal status, or agreed upon life cycles expire. The School's \$85,000 annual budget for athletic equipment breaks down to roughly \$1,200-\$1,800 for each athletics program to buy equipment and supplies per SY.⁵ The amount allocated is determined by each program's unique needs and number of participants. Fundraising allows departments to supplement each athletics program's basic supply and equipment needs.⁶

Factors that affect the School's uniform rotation schedule include: growth in participation numbers; unforeseen accidents; deterioration; damage; or wear and tear. Each athletic program, with permission from the athletic director, may utilize fundraising opportunities to purchase uniforms, and the uniform rotation schedule is adjusted if this occurs. The School does not maintain a list of equipment and uniform/apparel requests. Items purchased are reflected in invoices. Documentation from the District encompassed all the sources of funding received to aid each athletics program. The Complainant indicated that many teams do not have the ability to fundraise. The tennis teams illustrated one example of fundraising disparities during SY 2021-2022. The male tennis team fundraising/booster showed \$5,323.92 after purchasing \$2,339.60 in apparel, racquets, and an event tent, whereas the female tennis team fundraising/booster showed \$1,829.04 after purchasing \$2,405.00 in uniforms.⁷ District financial data for SY 2022-2023 does not indicate what happened with any excess funds.

Per diem is used for travel when teams qualify for state play-offs and is available to student-athletes, student managers, and district employed coaches. The School does not maintain records of what students or coaches receive per diem. Individual athletic teams do not receive a budget for transportation. Athletics as a whole received \$80,310.00 for transportation in SY 2021-2022 and SY 2022-2023. Modes of transportation are scheduled on a first come, first serve basis. The transportation department will process a request and assign a bus and driver if resources are available. Small teams typically will be offered a white activity bus, while larger teams are offered a yellow bus. If a yellow bus is not available, the School will inquire with a charter company. During SY 2021-2022, female athletics teams traveled 28 times by white buses and seven times by yellow buses, whereas male athletics teams traveled 19 times by white buses and 19 times by yellow buses. District financial data does not show charter buses were used by the District during SY 2021-2022 or SY 2022-2023.

The School has one athletic trainer assigned to all athletics programs. There were six student trainers for SY 2021-2022 and seven student trainers for SY 2022-2023. Student trainers are not assigned for specific events and instead volunteer for events they are able to cover; though, participation during football games is encouraged. The athletic trainer may also provide services at away games. If there are multiple events on a given day, the athletic trainer covers those with a

⁵ Number provided by the District's Athletic Director.

⁶ OCR did not investigate the independent booster clubs. However, athletics programs that benefit from support of booster clubs or other fundraising organizations must ensure that equivalent benefits and services are provided to members of both sexes.

⁷ During SY 2021-2022, the male tennis team had 19 student-athletes and the female tennis team consisted of 27 student-athletes.

higher chance of injury.⁸ Substitutes for the athletic trainer are available for multiple events/locations. The athletic trainer checks on each team as warranted. Coaches of other sports are kept informed of the whereabouts of the athletic trainer and have contact information if necessary.

B. Managers Attending Field Trips

The Complainant alleged the District refused to let female team managers attend the football team's field trip to Las Vegas. The District stated that no male or female team managers attended the trip because coaches were present as chaperones and handled water issues during the game. During a rebuttal interview with OCR on March 14, 2023, the Complainant alleged that the XXXX made a statement regarding female team managers and that he did not want the "responsibility of what happened with basketball", in that the male basketball players got in trouble for having females in their room. The Complainant indicated that XXXX made this statement on January 9, 2022, during a field trip planning meeting with several witnesses, including herself. Also, during the rebuttal interview, the Complainant provided OCR with information that there was one male team manager who started after SY 2022-2023 and was not a team manager during the summer, when the field trip to Las Vegas took place, and the football team only had female team managers.

C. Retaliation

The Complainant was the XXXX of the football booster club. In the OCR complaint, the Complainant indicates that after she expressed concerns regarding "Title IX violations" and "failure to accommodate players with IEPs and 504s during the [August 2022] Las Vegas trip", XXXX told her on July 22, 2022, she wasn't needed as a volunteer on the Las Vegas field trip. In the OCR interview, she said the volunteer activities could have included X-phrase redacted-X.

In its response to the OCR complaint, the District indicated that no parent volunteers attended the football team's field trip to Las Vegas in August 2022, because they were not needed; however, some parents chose to attend the trip as spectators at their own expense. Information from the Complainant includes an email sent by a District employee, X-phrase redacted-X, on August 28, 2022, thanking numerous volunteers, to include: a volunteer who made all the hotel, airfare, and charter bus arrangements, and catered team meals; a parent taking pictures; offers of help from parents; and a parent and family providing extra coolers of water. The Complainant stated during her rebuttal interview with OCR on March 14, 2023, that another parent was allowed to volunteer on the Las Vegas trip and provided the food.

III. Allegation #1 – Athletics Programs and Allegation #2 – Field Trips

⁸ The District did not provide its methodology for determining which sports were at a higher risk for injury.

A. Legal Standard

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 interscholastic, intercollegiate, club, or intramural athletics offered by a recipient of federal financial assistance, and no such District shall provide any such athletics separately on such basis. As a means of assessing compliance under the regulations, OCR follows its Policy Interpretation on Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413, et seq. (1979). Although the Policy Interpretation focuses on intercollegiate athletics, OCR applies the same general principles to high school athletic programs.

B. Analysis and Compliance Concerns

The totality of OCR's investigation to date reflects a concern that the School is not providing equal athletic opportunities for members of both sexes.

First, with respect to locker rooms under the Title IX regulations, at 34 C.F.R. § 106.41(c)(7), OCR examines the availability and quality of locker rooms. Based upon information gathered to date, OCR has a compliance concern that the School is not providing its male and female student athletes with equivalent locker rooms, with regards to quality and quantity. The female locker rooms have fewer or smaller lockers. This could impact female student-athletes' access to available lockers for storing equipment. The male PE locker rooms do not have doors on the bathroom stalls or any mirrors.

Second, with respect to equipment and supplies under the Title IX regulations, at 34 C.F.R. § 106.41(c)(2), OCR considers the quality, suitability, amount, maintenance, replacement, and availability of equipment and supplies. Equipment and supplies include uniforms, other apparel, sport-specific equipment and supplies, instructional devices, conditioning and weight training equipment, and general equipment. Based upon the information provided to date, OCR has a compliance concern regarding the provision of equipment and uniforms/apparel purchased through funding received through fundraisers or booster club assistance. In SY 2021-2022, the School's male tennis team had \$3,494.88 more in fundraising/booster than the female tennis team. The male tennis team was able to purchase further equipment and supplies than the female tennis team, such as racquets and an event tent. The District could not provide OCR with a list of equipment and uniform/apparel requests. By not monitoring expenditures, there can be a disparity in equipment and opportunities between male and female athletics programs.

Third, with respect to travel and per diem under the Title IX regulations, at 34 C.F.R. § 106.41(c)(4), OCR considered travel and per diem allowances specific to modes of transportation. With regards to modes of transportation, female athletes were not provided with equivalent transportation as male athletes during SY 2021-2022 and SY 2022-2023. Because buses are reserved on a first come first serve basis regardless of sex, OCR has a compliance

concern that the School is not taking into consideration equivalent opportunities for male and female athletics teams.

Fourth, with medical and training facilities and services, specific to availability of medical personnel, athletic trainers, and assistants, at 34 C.F.R. § 106.41(c)(8), OCR considered availability of medical personnel, athletic trainers, and assistants. Based upon the information gathered to date, OCR has a compliance concern that the School is not providing its male and female student-athletes equal opportunities with regards to the availability of medical personnel, athletic trainers, and assistants. There is only one athletic trainer who covers an event with the highest chance of injury and student trainers are encouraged to participate at football games.

Finally, OCR has a compliance concern that female team managers were excluded from participation in the football team's field trip to Las Vegas on the basis of sex. The District maintains there were legitimate reasons for not including team managers on the trip because they were not needed. The District also maintains that one male team manager was excluded along with the female team managers. However, the Complainant told OCR during her rebuttal interview that the male team manager did not start until after the Las Vegas field trip. Additionally, the Complainant told OCR that she witnessed XXXX say during a planning meeting that he did not want the team managers to attend the field trip because he did not want the football players to get in trouble for having females in their rooms. The Complainant provided the names of three witnesses she said could corroborate her claim about XXXX statement.

IV. Allegation #3 – Retaliation

A. Legal Standard

The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action, and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

B. Analysis and Compliance Concerns

The Complainant alleged the District refused to let her volunteer on the football team's field trip to Las Vegas after expressing concerns about Title IX and failure to accommodate players with IEPs and 504s. Considering these concerns were raised in close proximity in time and related to the Las Vegas field trip, it is conceivable there is a causal connection between the Complainant's concerns and the District excluding the Complainant from volunteering. The District maintains there were legitimate reasons for its decision to not bring parent volunteers on the football team's field trip to Las Vegas. However, an email provided to OCR by the Complainant demonstrated

that the District thanked parent volunteers for their participation at the field trip to Las Vegas. Based on the Complainant's relationship with the football program when she was XXXX of the booster club and on the August 28, 2022, email, OCR has concerns that the District's stated reason provided to OCR for refusing to allow the Complainant to volunteer conflicts with the email provided by the Complainant.

V. Conclusion

In accordance with Section 302 of the OCR's Case Processing Manual, a complaint may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the District requested to resolve the complaint with an agreement. In light of the District's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement is appropriate.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-22-1614 and will send a letter to the Complainant and to the District stating that the case is closed.

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

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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 that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions, please contact XXXX, the OCR investigator assigned to this complaint, at XXXX or XXXX.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Enclosure – Resolution Agreement (signed)

Cc via email only: Katy Anthes, Commissioner of Education