



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

May 30, 2014

Patrick Kelley
Superintendent
Murrieta Valley Unified School District
41870 McAlby Court
Murrieta, California 92562

(In reply, please refer to case no. 09-12-1441)

Dear Superintendent Kelley:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Murrieta Valley Unified School District (District) regarding its interscholastic athletics program at Murrieta Valley High School (School). OCR investigated whether the District failed to provide benefits, opportunities, and services to female athletes that are equivalent to those provided to male athletes in regard to scheduling of games and practice times.

OCR investigated the complaint under the authority of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, et seq. (Title IX), and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from the Department of Education. Athletics programs are specifically addressed at 34 C.F.R. § 106.41 of the Title IX regulation. As a means of assessing compliance, OCR follows the Policy Interpretation issued December 11, 1979, 44 Fed. Reg. 71413, et seq. (1979). The District receives Federal financial assistance and is obligated to comply with the requirements of Title IX.

To investigate this complaint, OCR interviewed the complainant, relevant administrators, staff, coaches and athletes at the School. OCR also reviewed documents and records the District provided.

OCR determined that the District has not provided girls equal opportunity in interscholastic athletics with respect to the scheduling of game times, as required by Title IX and its implementing regulation. The evidence did not support a conclusion of Title IX noncompliance with respect to the scheduling of practice times. The District has

signed a Resolution Agreement to address the area OCR identified as noncompliant. A copy of the Agreement is enclosed.

The applicable legal standards, the facts gathered during our investigation, and the reasons for our determination are summarized below.

A. Legal Standards

Athletics programs are specifically addressed at 34 C.F.R. § 106.41 of the regulation implementing Title IX, which provides 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 athletics program offered by the recipient. Section 106.41(c)(3) of the regulation provides that institutions that operate or sponsor interscholastic athletics shall provide equal athletic opportunity for members of both sexes in the scheduling of games and practice time. As a means of assessing compliance under the regulation, OCR follows the Policy Interpretation issued by the Department on December 11, 1979.¹

OCR examines whether the availability and quality of benefits, opportunities, and treatment provided were equivalent for members of both sexes. Equivalent is defined as equal or equal in effect. In accordance with the 1979 Policy Interpretation, OCR compares components of the boys' program and the girls' program on an overall basis, not on a sport-by-sport basis that would compare, for example, the boys' basketball schedule and the girls' basketball schedule. Where disparities are noted, OCR considers whether the differences are negligible. Where the disparities are not negligible, OCR determines whether they are the result of nondiscriminatory factors. Finally, OCR determines whether disparities result in the denial of equal opportunity to male or female athletes, either because the disparities collectively were of a substantial and unjustified nature or because the disparities in individual program areas are substantial enough by themselves to deny equality of athletic opportunity.

In examining the program component of scheduling of games and practice time, OCR considers the number of competitive events per sport, the number and length of practice opportunities, the time of day that competitive events and practice opportunities are scheduled, and the opportunities to engage in pre-season and post-season competition.

¹, 44 Fed. Reg. 71413, et seq. (1979)

B. Facts

- The School has no written policies for setting the competitive schedule. The Southwestern league schedule is set by the league, and rotates every two years so that teams are playing teams in a different order.
- The school athletic directors establish the pre-season schedule. They call local schools or schools that are advertising for games, and schedules games that will be played and the location. The California Interscholastic Federation (CIF) Southern Section sets the post season schedule based on two criteria: 1) athletes/teams who finish in the top three places in the league qualify for post season, and 2) the schedule is set based on rankings by the CIF office.
- During the 2012-2013 school-year, the School had nine boys teams, eight girls teams, and two co-ed teams. The boys teams consisted of the following sports: basketball, soccer, water polo, football, baseball, tennis, swimming, golf, and wrestling. The girls teams consisted of the following sports: softball, basketball, tennis, soccer, water polo, swimming, golf, and volleyball. The co-ed teams consisted of cross country and track. There were a total of twenty-three boys teams with 659 male athletes and nineteen girls teams with 490 female athletes at the School.

| Sport | Boys | Girls |
|-------------------|-------------|--------------|
| Baseball/Softball | 51 | 45 |
| Track | 110 | 140 |
| Cross Country | 42 | 53 |
| Golf | 10 | 9 |
| Tennis | 25 | 31 |
| Swim | 55 | 35 |
| Basketball | 37 | 38 |
| Soccer | 48 | 63 |
| Wrestling | 60 | 0 |
| Waterpolo | 37 | 33 |
| Football | 184 | 1 |
| Volleyball | 0 | 42 |
| Total | 659 | 490 |

- All sports are allowed to participate in scrimmages. The following boys teams chose not to participate: basketball, soccer, wrestling, baseball, track, swim and golf. The following girls team chose not to participate in scrimmages: golf, tennis, soccer, softball, and swim.

- OCR also compared the total number of competitive events for boys and girls teams. OCR reviewed the total number of events, away and home events, pre-season events, and prime-time games. Boys teams had 107 pre-season events, while girls teams had 102 pre-season events. The boys teams played 136 events at home, while the girls teams played 138 events at home; the boys teams played 186 events away while the girls teams played 189 events away. Boys teams had 325 events while girls teams had 330 events. The boys teams had 122 (95 on Friday and 27 on Saturday) or 37.5% events during primetime, while the girls' teams had 100 (70 on Friday and 30 on Saturday) or 30.3% during primetime. Boys teams had a total of 147 competitive events, while girls teams had a total of 146 competitive events. These numbers do not include post-league championship games. The evidence showed that teams that advanced to post-league play were provided with an opportunity to compete in them, regardless of the sex of the team.
- CIF rules state that only varsity level can compete in post-season events. All the teams at the School that qualified for post-season events participated in post season competition.
- Five boys teams competed in post-season events: football, water polo, basketball, soccer and golf. Five girls teams competed in post-season events: tennis, basketball, soccer, water polo and softball. Individual entrants represented teams in post-season events for two boys teams: wrestling, and swim. Individual entrants represented teams in post-season events for three girls teams: tennis, golf, and swim. Combined there were seven boys teams/individuals that competed in post-season event, while there were eight girls teams/individuals.
- The School provides three types of practice opportunities for students participating in interscholastic athletics: (1) sport-specific physical education (PE) classes during the school day; (2) general PE classes during the school day; and (3) sport-specific practices after school.
- Enrollment in a sport-specific PE class is limited to students who are members of the sports team for which the class was designed. A review of the District's documentation shows that sport-specific PE classes are offered for one semester each school-year, usually during the sport's off season. According to the School, general PE classes are not limited to students participating in interscholastic sports and do not focus on developing skills for a specific sport. The following sports, however, practice with their coaches during general PE classes in the off season: girls swim, softball, girls and boys basketball, and girls and boys soccer. After school practices are typical of team practices that occur when the sport is in season.

- Sport-specific PE classes provide an opportunity for the team to hold consistent practices and to develop sport-specific skills during the school day, when team members are most likely to attend. The OCR complaint alleged that more boys teams than girls teams at the School are provided with sport-specific PE classes.
- Six out of the nine boys teams, had a sport-specific PE class, for a total of 249 male athletes in these classes. Six out of the eight girls teams, had a sport-specific PE class, for a total of 219 female athletes in these classes. The six boys teams were: tennis, basketball, soccer, water polo, football, and baseball. The six girls teams were: softball, basketball, tennis, soccer, water polo, and swimming. Each of the boys teams was provided with one sport-specific PE class, except for football which had separate classes for varsity and junior varsity players, in order to ensure adequate supervision given the large size of the football team. Each of the girls teams was provided with one sport-specific PE class. Based on District data, OCR computed that approximately 37% of all male athletes and 48% of all female athletes participated in a sport-specific PE class. The following boys teams do not have a sport-specific class: wrestling, swimming, and golf. The following girls teams do not have a sport-specific class: volleyball and golf.
- The complainant alleged that boys basketball, boys water polo, and football have practices during general PE class in the second semester. The District reported to OCR that only general athletic training took place and there was no sport specific practice, with the exception of five practice sessions for boys basketball, which is reflected in the number of practices the District provided. These classes also had female students and other athletes in these classes. In addition, the District informed OCR that girls swim, girls basketball, boys and girls soccer and softball also have practices with their coaches during general PE class in the off season, which are also reflected in the number of practices the District provided.
- The District informed OCR that it decides which sports have sports specific PE classes based on whether there is a teacher available, there is room in the master schedule, and enough students are interested. If the District has over 30 students interested in the class that would be sufficient. OCR compared the total number of practice sessions before and after school (in season, out of season, and scrimmages) for boys teams and girls teams. Boys teams had a total of 1,545 practice sessions, while girls teams had a total of 1,210 practice sessions.
- The District informed OCR that it does not regulate how often teams practice in season or out of season. The coaches for each individual sport make those decisions. The female and male students who participate in the swimming, volleyball and water polo teams also compete with their club teams, and they practice year round with their club teams. The varsity team captains from these girls teams informed OCR that in the off-season they would not be interested in having practices because they are participating in their club sport practices and games during that time. They also stated that they did not want to have more in

season practices. OCR interviewed the varsity coaches for the girls teams and they also stated that more in season and off season practices were not needed.

- The following sports conducted summer camps between the dates of July 1, 2012 and August 1, 2012: boys and girls basketball, boys and girls soccer, baseball/softball, boys and girls water polo, football and volleyball.
- The OCR complaint did not allege, and OCR did not obtain information to suggest, that the length of practice sessions favored athletes of one sex.

C. Analysis

OCR found that there is sufficient evidence of a disparity, on the basis of sex, in the scheduling of games during primetime Friday games. The boys teams had a total of 95 or 29% of their games on Friday nights, while the girls had a total of 70 or 21% of their games on Friday nights. The disparities in Friday night games occurred in basketball, softball/baseball, tennis and water polo. A review of District data did not establish a disparity in the number of competitive events for both home and away or in opportunities to engage in pre-season and post-season competition.

There is insufficient evidence of a disparity, on the basis of sex, in the scheduling of practice times to establish a violation of Title IX. The nine boys teams had a total of 1,545 practice sessions, and the eight girls teams had a total of 1,210. Thus, on average, each male team had 171 practice opportunities and each female team had 151 practice opportunities over the course of the academic year. This difference of 20 practice opportunities, by itself, does not establish noncompliance. OCR looked further, to determine if there was any indication of a negative impact created by having, on average, 20 fewer practice opportunities. To the contrary, female athletes and their coaches informed OCR that due to robust off season practice and competition in the club sport programs outside of the District's athletic program, additional District practice time was not sought. Thus, while there is a 20 practice session difference, OCR could not establish a negative impact on the female athletes, and thus could not establish a disparity within the meaning of the regulation and Policy Interpretation.

The evidence did not support the OCR complaint allegation that more boys teams than girls teams received the benefit of a sport-specific PE class. The facts were insufficient to show that these classes benefited athletes of one sex more than the other. During the 2012-2013 school-year, six boys teams and six girls teams had a sport-specific PE class. While a larger number of male athletes participated in these classes (249 male athletes compared to 219 female athletes), a higher percentage of female athletes participated in sport-specific PE classes (48% of female athletes compared to 37% of

male athletes.)² OCR therefore concluded that there is insufficient evidence of a violation in regard to the sport-specific PE classes.

D. Conclusion

OCR found that a preponderance of the evidence supports a conclusion that the District failed to comply with the regulations implementing Title IX with respect to the athletics programs at Murrieta Valley High School. The District signed a Resolution Agreement with OCR that will resolve the issue addressed in this letter when it is fully implemented.

As of the date of this letter, OCR is closing the investigative phase of this case and opening the monitoring phase to ensure that the District fully implements the provisions of the Resolution Agreement. The complainant is being notified concurrently.

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

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.

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.

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 Complainant may file another complaint alleging such treatment.

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

² This analysis does not account for the general athletic PE classes which are held during the off season for boys basketball, boys water polo, football, girls swimming and girls water polo.

OCR wishes to thank Mary Walters and Darin Mott for working cooperatively in the resolution of this matter. If you have any questions regarding this letter, please contact Gemini McCasland, Attorney, at 415-486-5536.

Sincerely,

/s/

Sara Berman
Team Leader

Enclosure

cc: Mary Walters, Director of Student Support Services
Darin Mott, Murrieta Valley High School Athletics Director