VIA ELECTRONIC MAIL

Dr. Matt Doyle
Superintendent
Vista Unified School District
1234 Arcadia Ave.
Vista, CA 92084
XXXXXXXX

(In reply, please refer to case no. 09-16-1494.)

Dear Superintendent Doyle:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Vista Unified School District (the District). The Complainant alleged that the District discriminated against students on the basis of sex. Specifically, OCR investigated the following issues:

1. Whether the District has failed to designate a Title IX coordinator; and
2. Whether the interscholastic athletic program at Rancho Buena Vista High School (the School) discriminates against female students in the following program components:
   a. Effective accommodation of athletic interests and abilities
   b. Equipment and supplies
   c. Scheduling of games and practice times
   d. Travel and Per Diem
   e. Opportunity to receive coaching
   f. Provision of locker room, practice, and competitive facilities
   g. Medical and training facilities and services
   h. Publicity

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.
OCR gathered evidence by reviewing documents and correspondence provided by the Complainant and the District and by interviewing the Complainant. After careful review of the information gathered in the investigation, OCR concluded that the District did not violate Title IX with regard to Issue 1. Prior to OCR completing its investigation into Issue 2, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the Issue 2. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

**Issue 1: Whether the District has failed to designate a Title IX Coordinator.**

**Legal Standards**

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipients notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated.

**Findings of Fact**

The Complainant alleged that there was no Title IX Coordinator, and the School Athletic Director (Athletic Director) and Principal did not direct the Complainant to a Title IX Coordinator when he complained about the sex-based inequities in interscholastic athletic programs.

The District asserted it has a Title IX Coordinator and the information is posted on the District’s Student Support Services website, as well as the School’s Athletics website. The District also provided the names, titles, phone numbers, and email addresses for the Title IX Coordinators from the 2015-2016 school year through the current 2019-2020 school year.

OCR reviewed the District’s website and found that it has designated a Title IX Coordinator, whose name, title, address, phone number, and email address are listed.

**Analysis**

OCR finds that the District has designated a Title IX Coordinator, whose name, office address, and telephone number are listed on the District’s website. As such, pursuant to Section 303(a) of the OCR Case Processing Manual (CPM), OCR finds that the District did not violate Title IX with regard to this issue.

**Issue 2: Whether the interscholastic athletic program at the School discriminates against female students in the following program components:**

a. Effective accommodation of athletic interests and abilities

b. Equipment and supplies

c. Scheduling of games and practice times

d. Travel and Per Diem
e. Opportunity to receive coaching
f. Provision of locker room, practice, and competitive facilities
g. Medical and training facilities and services
h. Publicity

Legal Standards

Interests and Abilities

The Title IX regulations, at 34 C.F.R. §106.41(a), 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 athletics offered by a recipient school district, and no recipient school district shall provide any such athletics separately on such basis. Section 106.41(c) requires school districts to provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the regulations provides that OCR will consider, among other factors, whether the selection of sports and levels of competition effectively accommodate the interests and abilities of students of both sexes (34 C.F.R. §106.41(c)(1)).

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 Policy Interpretation). The 1979 Policy Interpretation states that, to effectively accommodate the interests and abilities of male and female athletes, school districts must provide the opportunity for individuals of each sex to participate in interscholastic competition, and for athletes of each sex to have competitive team schedules that equally reflect their abilities.

Other Athletic Benefits and Opportunities

Pursuant Title IX and its implementing regulations, OCR examines the following areas of a recipient’s athletic program: equipment and supplies; scheduling of games and practice times; travel and per diem allowances; opportunity to receive tutoring; opportunity to receive coaching; provision of locker rooms, practice and competitive facilities; and provision of medical and training facilities and services; housing and dining facilities and services; publicity; support services; and recruitment of student athletes.

In each of the areas, 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 men’s program and the women’s program on an overall basis, not on a sport-by-sport basis that would compare, for example, the men’s basketball uniforms and the women’s basketball uniforms. Where disparities are noted, OCR considers whether the differences are negligible. Where the disparities are not negligible, OCR determines whether they were the result of nondiscriminatory factors. Finally, OCR determines whether disparities resulted in the denial of equal opportunity to male or female athletes, either because the disparities collectively are 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. Nondiscriminatory differences based on unique aspects of a particular sport are considered.

Facts Gathered to Date

a. Effective accommodation of athletic interests and abilities

The Complainant alleged that the School is not providing equal opportunities for female students to play sports under Prong 1 of the Three Prong Test. Based on the Complainant’s analysis of the School’s enrollment and athletics participation data, the School needs to add 130 female athletes to reach proportionality.

The District asserted that it is compliant with Prong 2 of the Three Prong Test based on its continued expansion of athletic programs for female athletes. According to the District, the School has increased its female athletic teams since it was founded in 1987. Since 1987, the District has added girls’ water polo teams at the freshman/sophomore, junior varsity and varsity levels to the School’s interscholastic sport offerings to accommodate the interests and abilities of female students. In addition, during the 2014-2015 school year, the School added a girls’ varsity wrestling team to accommodate the interests and abilities of female students. Furthermore, the School added a varsity girls’ lacrosse team in the 2017-2018 school year, which started out as a club team in the spring of 2017 and went through a process of presenting to the Board of Education and receiving California Interscholastic Federation (CIF) approval to become a District-supported team.

In addition to adding girls’ teams, the School also reinstated girls’ teams. For instance, the School reinstated the girls’ freshman soccer team in the 2017-2018 school year and the girls’ freshman softball team in the 2018-2019 school year. Based on the participation data the District provided to OCR, there was a freshman girls’ soccer team in the 2015-2016 school year, but it was cut in the 2016-2017 school year. Similarly, there was a freshman girls’ softball team in the 2015-2016 school year, but it was cut during the 2016-2017 and 2017-2018 school years. According to the District, the School reinstated both teams after recruiting efforts by the soccer and softball coaches, including broadcast highlights and bulletin announcements encouraging interested students to attend informational meetings and try out.

The District stated that it will conduct athletic interest surveys to gauge student interest in sports that are not currently offered at the School beginning the 2016-2017 school year and each year thereafter. The District will consider the expansion of program offerings for female students based on, among other factors, the results of the athletic interest surveys.

OCR reviewed the participation data provided by the District, which contained the number of participants on each team in the School’s interscholastic athletic program, by sex, since the inception of female athletic teams in the 1987-1988 school year. The District also provided the School’s enrollment numbers, by sex, since the 1987-1988 school year. Based on the data provided, the underrepresented sex in terms of athletic opportunities has been females since the 1987-1988 school year. Additionally, based on the number of female students needed for exact proportionality and the average roster size of female teams, in all but one school year (2001-2002), there have been enough missing female athletes for new teams. The most recent data from
the District for the 2018-2019 school year indicates that there are 126 female athletes needed for exact proportionality, which is greater than the average team size of 13.25.

OCR also reviewed the participation data to see if the School added or cut teams since the 1987-1988 school year. The data shows the District cut girls’ teams then added it back a year or two later. For instance, in the 1989-1990 school year, the School cut the varsity girls’ cross-country, gymnastic, and JV gymnastics teams. In the 1990-1991 school year, the School added the girls’ varsity cross-country team, and in the 1991-1992 school year, the School added the girls’ gymnastics and JV gymnastics team. Though the two girls’ gymnastics teams were added back in the 1991-1992 school year, the two teams were cut again, along with freshmen girls’ soccer and softball. Then, in the 1993-1994 school year, the School added back the two gymnastics teams and the freshmen girls’ soccer and softball, as well as the JV swim and dive team, while cutting JV tennis and varsity and JV volleyball. The following year, 1994-1995, the School added back JV tennis and varsity and JV volleyball and added freshmen girls’ volleyball and basketball but cut girls’ gymnastics and JV gymnastics team.


b. Equipment and Supplies

The Complainant alleged that the girls’ wrestling team has not had adequate practice and/or competition equipment, supplies, and uniforms. Specifically, the Complainant described that the male-oriented singlet provided to a female wrestler burst open during a match because the thin material was not suited to a female wrestler’s shape. According to the Complainant, a School student club purportedly dedicated to helping boys and girls on the wrestling team, did not provide donations to help female wrestlers obtain necessary equipment, supplies and uniforms, even when desperately needed. Additionally, the Complainant alleged that other female athletes had older uniforms in poorer condition in comparison to male athletes’ uniforms and girls’ soccer did not receive equipment, supplies and uniform equitable to the boys’ soccer program.

The District asserted that it continually examines the quality, amount, suitability, maintenance, replacement, and availability of athletic equipment and supplies at the School to ensure equivalency for males and females. Specifically, each month, School site staff and District Athletic Department employees participate in a facilities meeting. During that meeting, the Athletic Director conveys facilities and equipment concerns to the District, including concerns regarding outdated athletic facilities, equipment, and supplies.

c. Scheduling of Games and Practice Time

The Complainant alleged that female wrestlers had fewer matches than male wrestlers, even though female wrestlers diligently attempted to arrange more opportunities to compete. The Complainant informed OCR that female wrestlers had fewer practice opportunities each week.
Additionally, the Complainant alleged that female soccer players had fewer opportunities to practice compared to male soccer players.

The District asserted that School teams follow the CIF San Diego Section (CIFSDS) guidelines for practices, pre-season, and post-season competitions, which dictates the number of competitive events per sport, the time of day competitive events are scheduled and the opportunities to engage in available pre-season and post-season competition. According to the District, the CIFSDS’s Green Book provides the number of practices and hours per week allowed, which the School uses to schedule practice opportunities for all athletic teams, and School athletic teams abide by the CIFSDS master calendar of starting dates of practice for each sport.

The District also noted that the wrestling teams have different scheduled practice times per week and all teams practice in the same space, which accommodates up to 28 wrestlers at one time and use the same practice mats. The District informed OCR that the 2015-2016 varsity girls’ wrestling team (12 athletes) practiced for 9 hours per week, the boys’ varsity and junior varsity wrestling teams (35 athletes in total) practiced together for 10 hours per week and the freshman/sophomore boys’ wrestling team (13 athletes) practiced for 9 hours per week. Because the boys’ varsity and junior varsity teams participate in a combined practice, the School offers them an additional hour of practice time per week than it offers to the boys’ freshman/sophomore team and the girls’ varsity team.

d. Travel and Per Diem

The Complainant stated that the School provided vans for male wrestlers to take to tournaments, whereas female wrestlers were required to provide their own transportation for all games and tournaments.

The District told OCR it does not provide transportation for athletics. However, the School has four vans for all academic departments and athletic teams to use. Because the vans are not always available to the School’s Athletic Department, most athletic teams use private vehicles to travel to games. Some programs rent buses, which are paid from the program’s budget or booster club funds.

e. Opportunity to Receive Coaching

The Complainant alleged that there was no fully dedicated girls’ wrestling coach. According to the Complainant, during the 2015-2016 wrestling season, a coach was officially dedicated to female wrestlers, but the coach did not fully concentrate on female wrestlers and more often coached male wrestlers in practice and took male wrestlers to competitions. The Complainant informed OCR that due to a lack of coaching, female wrestlers were unable to attend a number of competitions.

According to the Complainant, the School had more teacher-coaches for male teams and a higher absolute number of coaches for male teams. In addition, the Complainant informed OCR that girls’ teams more often had walk-on coaches without teacher privileges and thus, coaches of girls’ teams lacked ready access to prime storage space and facilities.
The District asserted that the availability of full-time coaches, part-time coaches, and part-time assistant coaches across all School athletic teams is equal in effect for both male and female athletes. The District informed OCR it makes volunteer coaches available to all teams, so long as they are screened through the applicable District Volunteer Policy.

f. Provision of Locker Rooms, Practice and Competitive Facilities

The Complainant alleged that female athletes, including female wrestlers, lack adequate locker room facilities for changing into practice and competition apparel. Specifically, the Complainant informed OCR that male wrestlers were permitted to take over the entire wrestling room to change, while female wrestlers were forced to wait outside the wrestling room until the male wrestlers had completed changing. In addition, the Complainant alleged that the female wrestlers were not allowed to utilize the wrestling room for team meetings.

The District asserted that it offers high quality facilities both on and off-campus for use by School athletic teams and specific locations of the facility depend on the type of sport and whether off-campus facilities are better suited for the particular sport, such as for water polo. According to the District, a majority of the School athletic facilities have been renovated within the past three years.

The District informed OCR that in some cases, multiple School athletic teams require the use of the same facility and to accommodate periods of exclusive use for each team, the coaches for the respective teams coordinate their practice schedules to ensure that a team obtains exclusive use of the facility during the team’s practice and competitive events. The coaches also collaborate with School Athletic Department staff to ensure that all facilities are properly prepared for the respective practice and competitive events.

The District asserted that all student athletes are eligible to receive a locker in the boys’ or girls’ locker room. For female varsity athletes, a team room is available in the girls’ locker room. For varsity and junior varsity football players and varsity basketball players, a team room locker is available in the boys’ locker room. The girls’ team room facility and locker room provide more space for female varsity team members to hang their uniforms and store their equipment than the boys’ locker and team rooms. All female varsity team members have access to a larger team room and any female varsity member can check out a team room locker upon request.

g. Medical and Training Facilities and Services

The Complainant alleged that the School’s trainer provided male athletes with icing, taping and other services. However, every time the Complainant sent a female athlete to the training room for icing, the trainer would not be present or would send the female athlete away because the trainer was too busy to help her.

According to the District, the School has one certified trainer (Trainer) who is available for all sports teams. The School also utilizes adult volunteer trainers. The Trainer has a dedicated room in the athletic training room where athletes can receive services and supplies, such as athletic tape, Icy Hot, First Aid services, and a whirlpool.
h. Publicity

The Complainant alleged that female wrestlers and other female athletes received inferior promotion and publicity, including promotion of female competitive sporting events, individual players and their achievements, team-wide achievements, and overall support, in comparison to male athletes. Specifically, the Complainant informed OCR that female wrestlers at the School were very successful, proceeding to the highest levels of CIF competition in the state, winning the state championship, and proceeding to national-level competition. However, the Complainant alleged that during a Winter Sports Season rally, female wrestlers were not permitted to participate as featured athletes, yet the male wrestlers were recognized in front of the School and allowed to conduct a sports demonstration.

In addition, the Complainant alleged that there was not consistent and prominent web announcements on the School website or in hard-copy posters and banners displayed when female wrestlers took top honors, which were the manner in which male athletes were typically recognized. The Complainant also informed OCR that on the School’s outdoor electronic marquee, male athletes and their teams were displayed more often than female athletes and teams.

The District asserted that as part of the Athletic Director’s duties, each Monday, the Athletic Director emails a recap of the previous week’s results for all School athletic teams to the Principal, who then includes these athletic updates in weekly updates to staff and parents. Further, the District informed OCR that the School holds one athletic pep rally for each season and all sports are involved in the rallies, and there is a marquee outside to keep the public updated on sporting events. Additionally, the School hosts a television news program, which highlights sports teams throughout the year. The District also informed OCR that the School’s coaches submit athletic results and scores to the San Diego Union Tribune, a local newspaper, for consideration for publication.

Since filing the complaint with OCR in 2016, the Complainant continues to allege that the same sex-based disparities in the School’s interscholastic athletic program persist. In letters from 2019 and 2020, the District told OCR it has taken steps to provide equal opportunities, benefits, and treatment for members of both sexes at the School with respect to the following program components: equipment and supplies; scheduling of games and practice times; travel and per diem; opportunity to receive coaching; provision of locker room, practice, and competitive facilities; medical and training facilities and services; and, publicity.

Analysis

The 1979 Policy Interpretation permits three alternate ways of assessing whether recipients are providing nondiscriminatory opportunities to participate in interscholastic athletics, commonly referred to as the “Three Part Test” or “Three Prong Test”. The Three Prong Test is intended to allow school districts to maintain flexibility and control over their athletic programs. School districts can demonstrate compliance in any one of the following ways:
1. Interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among interscholastic athletes, the school district can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among interscholastic athletes and the school district cannot show a history and continuing practice of program expansion, it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

In determining whether a recipient has demonstrated that the interests and abilities of the historically underrepresented sex have been fully and effectively accommodated by the present program, OCR considers whether there is: a) unmet interest in a particular sport; b) sufficient ability to sustain a team in the sport; and c) a reasonable expectation of competition for the team. If all three conditions are present, OCR will find that the District has not met Prong 3.

In this case, OCR finds that the District cannot currently demonstrate compliance with any of the three prongs. The District has not met Prong 1 because, since the inception of female athletic teams in the 1987-1988 school year, there has not been substantial proportionality between student enrollment and athletic participation by sex. OCR finds substantial proportionality when the number of athletes of the underrepresented sex needed to reach exact proportionality is less than the average team size for that sex. OCR does not require exact proportionality, sometimes referred to as “strict” proportionality, to find compliance with Prong 1. Here, in the most recent school year for which the District provided data, the 2018-2019 school year, there are 126 female athletes needed for exact proportionality, which is greater than the average team size of 13.25. Therefore, the District cannot demonstrate compliance under the substantial proportionality criteria of Prong 1.

OCR also finds that the District is not meeting Prong 2 because the data does not demonstrate a history and continuing practice of program expansion for female students. Though the District has added female teams, such as varsity wrestling and varsity lacrosse, it has also cut several female teams. The participation data provided by the District shows that since the 1987-1988 school year, there have been twelve school years when the number of female athletic opportunities decreased as compared to the previous year. OCR also found that the School cut viable teams, as demonstrated by the fact that after cutting the teams, the School later added the teams back. This pattern of cutting teams viable teams occurred with gymnastics and JV gymnastics, JV tennis, varsity and JV cross country, JV swim and dive, varsity golf, and freshmen water polo. Based on this documentation of reducing athletic participation opportunities for the underrepresented sex, the District cannot demonstrate compliance under the history and continuing practice of expansion criteria of Prong 2.

Lastly, the District is not currently meeting Prong 3 because it cannot demonstrate to OCR that it has a fully and effectively accommodated female students’ interests and abilities in interscholastic athletics. The District has no current method to ensure that they know what female students’ athletic interests are or a way to ensure that the program is adapted to meet those evolving interests. According to the District, the School began gauging student athletic
interest in the 2016-2017 school year, after this complaint was filed with OCR. However, since that time, the District has not shared the survey results with OCR, so OCR is unable to review survey response rates, survey data, and how the District has responded to the survey data. Thus, based on the evidence provided to OCR thus far, the District has not demonstrated compliance with Prong 3.

Prior to the conclusion of the investigation of this issue, the District expressed interest in a voluntary resolution and OCR found such a resolution was appropriate to resolve the concerns regarding the eight program components under Issue 2.

In order to complete this investigation, OCR would need to gather additional data regarding: equipment and supplies; scheduling of games and practice times; travel and per diem; opportunity to receive coaching; provision of locker room, practice, and competitive facilities; medical and training facilities and services; and, publicity. OCR would also need to request additional information, including interviews with staff, coaches, and student athletes. Additionally, OCR would need to conduct a facilities inspection at the School.

Conclusion

This concludes the investigation of this complaint.

To address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement) which is aligned with Issue 2 and the findings and information obtained by OCR during its investigation. Under the Agreement, the District will conduct an objective assessment of the student body at the School to determine the existence and/or scope of any unmet athletic interests of the underrepresented sex, in the School’s athletics programs. If the District identifies a sport or sports in which there is sufficient, but unmet interest and ability of the underrepresented sex to participate at the interscholastic level at the School, the District will add athletics opportunities at the School until such time as the School is fully and effectively accommodating the expressed interests and abilities of the underrepresented sex. The District will also develop a process or procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at the School. The Agreement further requires the District to address the concerns regarding sex-based disparities in the following program components: equipment and supplies; scheduling of games and practice times; travel and per diem; opportunity to receive coaching; provision of locker room, practice, and competitive facilities; and, publicity. The District will also review and conduct a full interscholastic athletic program evaluation to determine whether the School’s athletic program is equivalent for girls and boys in terms of: equipment and supplies; scheduling of games and practice times; travel and per diem; opportunity to receive coaching; provision of locker room, practice, and competitive facilities; medical and training facilities and services; and, publicity. Lastly, under the Agreement, OCR will provide Title IX athletics training to key administrators from the District and School, including, but not limited to, the Title IX Coordinator, Athletic Director, and Principal, and all coaches of interscholastic and club teams at the School.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When
fully implemented, the Agreement is intended to address the concerns identified during OCR’s investigation of Issue 2. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

The Complainant has a right to appeal OCR’s determination of Issue 1 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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.

Please be advised that the District may not harass, coerce, intimidate, retaliate, 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 another 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. 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee, Civil Rights Attorney, at annie.lee@ed.gov.

Sincerely,

/s/
Zachary Pelchat
Team Leader

Enclosures (1): Agreement

cc: Tiffany Santos and Lori Chiu, counsels for the District (via email only)