

**Resolution Agreement
Complaint No. 09-16-1494
Vista Unified School District**

The Vista Unified School District (the District), without admitting to any violation of law, agrees to fully implement this resolution agreement (Agreement) to resolve the compliance concerns identified by the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, in the above-referenced OCR case number.

Definition of “District’s Reopening”

For purposes of this Agreement, the term “District’s Reopening” shall mean the date upon which the District resumes California Interscholastic Federation-sanctioned athletic competition at Rancho Buena Vista High School (School) following the period of the District’s closure due to the COVID-19 global pandemic. On or before such date, the District’s Title IX Coordinator shall contact OCR to inform OCR of the effective date of the District’s Reopening for purposes of monitoring the District’s compliance with the timelines set forth herein.

I. Training

Within ninety (90) calendar days of the District’s Reopening, key administrators from the District and School, including, but not limited to, the District’s Title IX Coordinator, School Athletic Director, and School Principal, and all coaches of interscholastic and club teams at the School, will attend a training conducted by OCR. The training will cover the District’s general responsibilities under Title IX and its application to athletics.

II. Effective Accommodation of Interests and Abilities

A. Purpose

The District, through the terms expressly outlined in this Agreement, agrees to provide participation opportunities for female and male students at the School that effectively accommodate the athletic interests and abilities of members of both sexes, consistent with the requirements of Title IX, the regulation at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies. The District will demonstrate that the interests and abilities of the underrepresented sex are fully and effectively accommodated by the School’s current athletics program.

B. Definitions

1. **Sports:** OCR does not have a specific definition of the term “sport.” Instead, OCR considers several factors related to an activity’s structure, administration, team preparation and competition.¹

¹ See OCR Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance, September 17, 2008; see also *Biediger v. Quinnipiac*, 728 F. Supp. 2d 62 (D. Conn. 2010) (competitive cheerleading may qualify as a sport for purposes of Title IX if the OCR factors are met).

2. **District's normal competitive region and geographic area:** OCR considers available competitive opportunities in the geographic area in which the institution's athletes primarily compete, including: (a) competitive opportunities offered by other schools against which the institution competes; and (b) competitive opportunities offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete.²

III. Determination of Unmet Interests and Abilities

A. Assessment and Data Provisions

In order to determine whether there are unmet interests and abilities among members of the underrepresented sex in the School's interscholastic athletics program, the District will take the following actions:

The District will conduct an objective assessment (Assessment) of its 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.

The Assessment will consider whether the interested students have the ability to sustain an interscholastic team, noting that they do not need the ability to sustain a successful or elite team, but only need to show that they have the potential to participate in team try-outs, practices and competitions and, with coaching, the potential to attain sufficient ability to participate at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest. The Assessment will be based on multiple indicators of interests and, if applicable, multiple indicators of abilities, and shall include the following:

1. A survey of the underrepresented sex at the School. The survey shall seek information on the interest and, if applicable, ability of the underrepresented sex to participate in sports currently offered and in sports not currently offered by the School.³ A copy of the draft survey will be submitted to OCR for its review and approval before it is distributed to students.
2. A review of the results of recent surveys of students, if any, or other information collected from students using a method that is designed to fully and accurately assess unmet athletic interests and, if applicable, abilities in interscholastic sports among the underrepresented sex.
3. Identification of sports, squads, and levels of sports for the underrepresented sex that are not currently offered by the School but are offered either by schools that compete within the league(s) in which the District competes or by schools that are within the District's normal competitive region and geographic area.

² See OCR Dear Colleague Letter, April 20, 2010.

³ See OCR Dear Colleague Letter, April 20, 2010, pages 9-10.

4. For the 2018-2019 and 2019-2020 school years, rates of participation⁴ by the underrepresented sex in interscholastic sports, club sports, and physical education courses that are offered in the District's high schools, and community sports leagues, clubs or other youth programs offered in the District's normal competitive region and geographic area.
5. For the 2018-2019 and 2019-2020 school years, if applicable, a review of the number of members of the underrepresented sex who were cut from each School team and the reasons they were cut, to assess whether any of those students had or have the ability to compete in that sport and whether sufficient numbers of students were cut to sustain another level in that sport (i.e., junior varsity or freshman).
6. A review of any requests (whether oral, written, formal or informal) made to School Board Members, District administrators, coaches, or staff by or on behalf of the underrepresented sex to add a particular sport, squad, or level of sport, or to elevate an existing club sport to interscholastic sport status. This review may be limited to requests that were received during the 2018-2019 and 2019-2020 school years.
7. For the 2018-2019 and 2019-2020 school years, if applicable, a review of any assessments made by District coaches or staff during tryouts, or observations of students participating in club or interscholastic competition offered by the School or in community sports leagues, clubs or other youth programs offered in the District's normal competitive region and geographic area, and other information reflecting the ability of members of the underrepresented sex to compete in a particular sport, prior participation in that sport or a similar sport at the middle or high school level or interscholastic, club or community level, general athletic ability, participation in other high school interscholastic sports, the nature of the particular sport, and other relevant factors.
8. Any other information that demonstrates the athletic interests and abilities of the underrepresented sex at the School.

B. Reporting Requirements

To demonstrate its compliance with the terms of Section III of this Agreement, the District will submit the following information to OCR:

1. Within ninety (90) calendar days of the District's Reopening, a copy of the draft survey referenced in Section III.A.1. above, for OCR's review and approval.
2. Within ninety (90) calendar days of the District's Reopening, a complete description of the planned methodology to conduct the survey, including how the survey will be distributed, the approximate number of surveys to be distributed, the grade levels of

⁴ The rates of participation will be provided by the District to the extent that the District is able to obtain these numbers from non-District schools, community sports leagues, clubs and other youth programs offered in the District's competitive region and geographic area.

students who will receive the surveys, any planned follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who will evaluate the responses to the surveys, and the protocol for retaining a copy of any notes or other documents compiled during the review of the surveys.

3. Within ninety (90) calendar days of receiving OCR's approval of the draft survey referenced in Section III.A.1. above, the District will submit to OCR a detailed report (Report) about the Assessment conducted pursuant to Section III of this Agreement. The Report will include, at a minimum, the following information:
 - a. A copy of the results of the survey referenced in Section III.A.1., above, including but not limited to the number of students, by sport, who indicated an interest in each sport, a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, the grade levels of students who received the surveys, any follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who evaluated the responses to the surveys, and a copy of any notes or other documents compiled during the review of the surveys.
 - b. An analysis of the results of any other recent surveys of students, if any, or other information collected from students using a method that is designed to fully and accurately assess unmet athletic interests and, if applicable, abilities in interscholastic sports among the underrepresented sex.
 - c. A summary of sports, squads, and levels of sports for the underrepresented sex that are not currently offered by the School but are offered either by schools that compete within the league(s) in which the District competes or by schools that are within the District's normal competitive region and geographic area.
 - d. For the 2018-2019 and 2019-2020 school years, the School's rates of participation by the underrepresented sex in:
 - i. Interscholastic sports;
 - ii. Club sports;
 - iii. Physical education courses; and
 - iv. Community and youth sports leagues or clubs in the normal competitive region.⁵
 - e. If applicable, a summary of the number of students from the underrepresented sex who were cut from each School team, and the reasons they were cut.
 - f. A copy of any written requests and a summary of any non-written requests made by or on behalf of the underrepresented sex to add a particular sport, squad, or level of sport, or to elevate an existing club sport to interscholastic sport status.

⁵ The rates of participation will be provided by the District to the extent that the District is able to obtain these numbers from community and youth sports leagues or clubs in the normal competitive region.

- g. For the 2018-2019 and 2019-2020 school years, if applicable, a summary of any assessments made during tryouts, or other information reflecting the ability of the underrepresented sex to compete in a particular sport. This includes prior participation in that sport or a similar sport at the middle or high school level or club or community level, general athletic ability, participation in other high school interscholastic sports, the nature of the particular sport, and other relevant factors.
- h. Any other information that was considered by the District as part of its Assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of the underrepresented sex at the School.

IV. Actions to Increase Athletic Opportunities

A. Provisions

If, through the above-described Assessment, 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 (i.e., there remains no unmet interest and ability).⁶

For purposes of this provision, “sufficient interest” is defined as the minimum number of athletes needed to support a team. For “sufficient ability,” it is sufficient that interested students and admitted students have the potential to sustain an interscholastic team and students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through try-outs or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest. Students must, however, be academically eligible for participation in athletic opportunities, and must not be participating in another athletic opportunity that renders them unable to participate in the newly identified activity.

In providing additional athletic opportunities for the underrepresented sex to accommodate their expressed interests and abilities, the District shall do the following:

1. Sports Currently Offered:
 - a. The District will determine, for sports that are currently offered as interscholastic sports at the School, whether there is a sufficient number of the underrepresented sex with the interest and, if applicable, ability to support the creation of additional levels of competition (junior varsity, freshman, etc.) or multiple squads at the same level of competition, and sufficient competition within the District’s normal

⁶ For example, to the extent that there is no longer sufficient interest by the underrepresented sex to maintain the athletic opportunity.

competitive region, to support additional levels of competition or multiple squads at the same level of competition in those sports. If so, the District will add additional levels of competition or squads at the same or a lower level of competition at the School in those sports by the next competitive season consistent with the above determination.

- b. In order to increase the competitive participation opportunities for students who are members of the underrepresented sex, the District will consider expanding the squad sizes for interscholastic sports currently offered at the School, consistent with the nature of each sport and the level of interest in each sport. The District will increase the size of each squad where determined to be appropriate. If necessary, the District will provide sufficient coaching staff to support the addition of new athletes to any given squad and take any other steps necessary to ensure that the new athletes on each expanded squad are provided meaningful opportunities to participate in interscholastic athletics.
2. Response to Developing Interest and Abilities:
 - a. The District will determine whether there is a sufficient number of the underrepresented sex at the School with sufficient interest and, if applicable, ability to support the addition of a team or multiple teams (varsity, junior varsity, freshman, etc.), in sports not currently offered by the School as interscholastic sports, and whether there is sufficient competition within the District's normal competitive region and geographic area for those teams/sports. If so, the District will add a team or multiple teams in those sports at the School by the next competitive season and will begin the process of elevating the sport to interscholastic status from club status in accordance with District policy.
 - b. For any sport that is not currently offered by the School where there is a sufficient number of the underrepresented sex who have sufficient interest and, if applicable, ability in that sport, but where the District determines that there is not sufficient competition within the School's normal competitive region, the District will take ongoing steps to develop students' interest and ability. These steps may include establishing intramural or club sports, exploring the feasibility of establishing competition in the District's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.
 3. OCR has made clear to the District and the District understands that OCR does not require or encourage the elimination of any District athletic teams and that it seeks action from the District that does not involve the elimination of athletic opportunities, because nothing in Title IX or the three-part test requires an institution to cut teams or reduce opportunities for students who are participating in interscholastic athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students.

4. Additional Interscholastic Opportunities:

To the extent that the District adds any sports or additional levels of teams at the School, the District will provide those team(s), in a manner comparable to other interscholastic teams, including, but not limited to: coaches, equipment and supplies, scheduling of games and practice times, provision of locker room, practice, and competitive facilities, medical and training facilities, travel funds and per diem, and publicity. The District will also publicize any new sports or additional levels of teams through written notices, verbal announcements and postings on the District's and School's websites.

B. Reporting Requirements

1. Within ninety (90) calendar days of submitting the Report to OCR pursuant to Section III.B.3 herein, if the District was obligated to offer additional athletic opportunities pursuant to Section II of this Agreement, the District will provide OCR with a detailed report that reflects the steps taken by the District pursuant to Sections IV.A.1-4 of this Agreement, to create new opportunities for the underrepresented sex. This report will detail the timetable for the addition of new sports, levels of sports or newly created club and/or other opportunities added pursuant to this Agreement. It will also describe how the creation of additional athletics opportunities taken pursuant to this Agreement will effectively accommodate the expressed interests and abilities of the underrepresented sex (i.e., there remains no unmet interest and ability).
2. Within ninety (90) calendar days of submitting the Report to OCR pursuant to Section III.B.3 herein, if the District's Assessment demonstrates that it is fully and effectively accommodating the athletic interests and abilities of the underrepresented sex at the School, the District will submit information detailing its determination of the same.
4. By August 1 of each academic year after the District's Reopening and for the three academic years following the District's Reopening, the District will provide OCR with a copy of the squad list for the School from the previous academic year. For example, by August 1, 2021, the District will provide all rosters from the School for the 2020-2021 academic year.
5. By August 1 of each academic year after the District's Reopening and for the three academic years following the District's Reopening, the District will provide the enrollment data of the School by sex from the previous academic year.
6. By August 1 of each academic year after the District's Reopening and for the three academic years following the District's Reopening, the District will provide information regarding any increases to the size of its squads at the School, as described by Section IV.A.1.b. above.

V. Additional Commitments to Improve Athletic Opportunities for the Underrepresented Sex

A. Provisions

1. The District will 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 procedure will be written and notice of it will be published in the Student Handbook and the individual responsible for responding to any requests will be identified by name and contact information. This information will also be displayed on the District's and School's websites (athletics page).
2. During the Spring Semester after the District's Reopening and immediately preceding the beginning of each school year, the District will provide written notice to coaches, physical education teachers, guidance counselors, and administrators, of all sports offered at the School in the upcoming school year.
3. During the Spring Semester after the District's Reopening and immediately preceding the beginning of each school year, the District will provide a written description of all sports offerings at the School to all students in their physical education classes. This information will also be posted on the District's and School's websites (athletics page).
4. The District will maintain the interscholastic athletic squad lists, which shall reflect the participation numbers for each sport, by sex, as of each team's first competitive event until the end of the monitoring period of this Agreement. These records will not be destroyed or otherwise altered so that they can be submitted to OCR consistent with the terms of this Agreement.

B. Reporting Requirement

1. Within sixty (60) calendar days of the District's Reopening, the District will submit a copy of its procedure for requesting new sports, as required above, and links to the locations on the District's and School's webpages where the revised procedure is located.
2. Within thirty (30) calendar days of distributing each set of notices required by Section V.A.2 and V.A.3 for the duration of this Agreement (three academic years following the District's Reopening and satisfaction of Section XIV), the District will provide OCR with a copy of the notices provided to the adults and students, as required by Sections V.A.2. and V.A.3., above, and a link to the location on its webpage where the notices are located.

VI. Equipment and supplies

A. Provisions

1. The District will ensure that female wrestlers at the School have appropriate and adequate uniforms for competition.
2. The District will ensure that female soccer players at the School have equipment, supplies, and uniforms equivalent to male soccer players.

B. Reporting Requirement

1. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that female wrestlers at the School have appropriate and adequate uniforms for competition.
2. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that female soccer players at the School have equipment, supplies, and uniforms equivalent to male soccer players.

VII. Scheduling of games and practice times

A. Provisions

1. The District will ensure that female wrestlers at the School have equivalent competition and practice opportunities as male wrestlers. If the District is unable to ensure that female wrestlers at the School have equivalent competition opportunities as male wrestlers, the District will provide documentation that this was due to the lack of reasonable opportunities for competition for female wrestlers in the normal competitive region and geographic area.
2. The District will ensure that female soccer players at the School have equivalent practice opportunities as male soccer players.

B. Reporting Requirement

1. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that female wrestlers at the School have equivalent competition and practice opportunities as male wrestlers or documentation showing the lack of reasonable opportunities for competition for female wrestlers in the normal competitive region and geographic area.
2. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that female soccer players at the School have equivalent practice opportunities as male soccer players.

VIII. Travel and Per Diem

A. Provision: The District will ensure equivalent access and opportunity to use the School vans for female wrestlers at the School, including, but not limited to, providing written notice to the coach(es) of female wrestlers about the process to sign up for School vans.

B. Reporting Requirement

1. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that the female wrestlers at the School have equivalent access and opportunity to use the School vans, including, but not limited to, written notice to the coach(es) of female wrestlers about the process to sign up for School vans.

IX. Opportunity to receive coaching

A. Provision: The District will ensure that a coach(es) is hired to provide full coverage for the girls' wrestling program that is equivalent to what is provided to the boys' wrestling program.

B. Reporting Requirements

1. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that a coach(es) is hired to provide full coverage for the girls' wrestling program that is equivalent to what is provided to the boys' wrestling program.

X. Provision of locker room, practice, and competitive facilities

A. Provision: The District will ensure that female wrestlers have equivalent access to the wrestling room as male wrestlers, including, but not limited to, ensuring that all wrestlers change into their uniforms in a designated locker room area and not the wrestling room.

B. Reporting Requirement

1. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that female wrestlers have equivalent access to the wrestling room as male wrestlers, including, but not limited to, ensuring that all wrestlers change into their uniforms in a designated locker room area and not the wrestling room.

XI. Publicity

A. Provision: The District will ensure that the girls' wrestling program has equivalent publicity as comparable boys' athletics programs, including, but not limited to, equivalent

representation in sports rallies, the School website, posters and banners at the School, and the outdoor electronic marquee.

B. Reporting Requirement

1. Within sixty (60) calendar days of the District's Reopening, the District will provide OCR with documentation showing that the girls' wrestling program has equivalent publicity as comparable boys' athletics programs, including, but not limited to, equivalent representation in sports rallies, the School website, posters and banners at the School, and the outdoor electronic marquee.

XII. Designated Person to Review and Discuss the District's Documentation

A. Provision: The District will designate a knowledgeable person to review and discuss the documentation provided in accordance with Sections VI.B., VII.B., VIII.B., IX.B., X.B., and XI.B. above with OCR. The District understands that OCR may require additional documentation to demonstrate that the District has satisfied Sections VI.A., VII.A., VIII.A., IX.A., X.A., and XI.A. above.

B. Reporting Requirement

1. Within thirty (30) calendar days of the District Board of Education's approval of this Agreement, the District will provide to OCR the name, title, and contact information for the designated knowledgeable person, described in Section XII.A.
2. Within fifteen (15) calendar days of submitting the documentation required by Sections VI.B., VII.B., VIII.B., IX.B., X.B., and XI.B. above, the District's designated knowledgeable person will review and discuss the documentation with OCR. The District understands there may be additional discussions with OCR as OCR determines whether the District has satisfied Sections VI.A., VII.A., VIII.A., IX.A., X.A., and XI.A. above.

XIII. Evaluation

A. Provision: The District will review and conduct a full interscholastic athletic program evaluation (Evaluation) to determine whether the following areas of the School's athletic program are equivalent for girls and boys:

1. Equipment and supplies;
2. Scheduling of games and practice times;
3. Travel and per diem;
4. Opportunity to receive coaching, including, but not limited to, whether girls' and boys' teams have equivalent numbers of coaches employed full-time by the District;
5. Provision of locker room, practice, and competitive facilities;
6. Medical and training facilities, including, but not limited to, whether girls and boys have equivalent access to the trainer and the trainer's facilities and services; and
7. Publicity

This Evaluation will include all interscholastic sports being offered at the School and is not limited to the sports identified in the complaint or the previous Agreement provisions above. If the Evaluation identifies any areas of disparity between girls and boys, the District will draft a proposed plan (Plan) to address each disparity, including strategies and a timeframe to address each disparity.

B. Reporting Requirement

1. Within one hundred and twenty (120) calendar days of the District’s Reopening, the District will provide OCR with its Evaluation and Plan (if any), pursuant to Section XIII.A., for review and approval. The District will also designate a knowledgeable person to review and discuss the Evaluation and Plan (if any) with OCR.
2. After OCR approves the Evaluation and Plan (if any), the District will implement the Plan and, for every six months for the duration of this Agreement (three academic years following the District’s Reopening and satisfaction of Section XIV), provide OCR with documentation sufficient to demonstrate that the District has effectively implemented the plan. The District understands that OCR may require additional documentation to demonstrate that the District has satisfied its Plan and is in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.41(c)(1), which was at issue in this case.

XIV. Monitoring

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the District understands that, during the monitoring of this Agreement, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement. Upon the District’s satisfaction of the commitments made under the Agreement, OCR will close the case.

The District understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of the resolution agreement and/or the regulation implementing Title IX at 34 C.F.R. § 106.41(c)(1), which was at issue in this case. Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Signed:

_____/s/_____
Superintendent
Vista Unified School District

_____06/26/2020_____
Date