



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

April 29, 2019

VIA ELECTRONIC MAIL

Denise R. Jaramillo
Superintendent
Alhambra Unified School District
1515 West Mission Road
Alhambra, California 91803

(In reply, please refer to # 09-16-1548.)

Dear Superintendent Jaramillo:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Alhambra Unified School District (the District). OCR investigated whether the District discriminated against female students on the basis of sex in the athletics program at Alhambra High School (the School) by failing to provide benefits, opportunities, and services to female athletes that were equivalent to those provided to male athletes. Specifically, OCR investigated whether:

1. The interscholastic athletic program at the School discriminated against female students in the following program components:
 - a. Equipment and supplies
 - b. Opportunity to receive coaching
 - c. Locker rooms, practice and competitive facilities
 - d. 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 Department. The District is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

OCR's analysis focused on the benefits and opportunities provided in the 2016-17 school year. To investigate this complaint, OCR conducted interviews with the Complainant, School and District administrators, the head coach of each boys' and girls' team at the School, the former softball coach at the School, and groups of athletes from each boys' and girls' team at the School. In sum, OCR conducted approximately 45 interviews, mostly during a one week site

visit to the School in September 2017, and also visited each facility where the School's teams practiced and competed, with the exception of the golf course. OCR also reviewed documents and other information provided by the Complainant and the District.

Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so. The legal standards, facts gathered to date, and the reasons for OCR's determinations are summarized below.

Legal Standards

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 athletics offered by a recipient school district, and no recipient school district shall provide any such athletics separately on such basis. 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).

In its investigation, OCR examined the following areas of the School's athletic program: equipment and supplies; opportunity to receive coaching; provision of locker rooms, practice and competitive facilities; and publicity.

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 were noted, OCR considers whether the differences were negligible. Where the disparities were 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 were of a substantial and unjustified nature or because the disparities in individual program areas were substantial enough by themselves to deny equality of athletic opportunity. Nondiscriminatory differences based on unique aspects of a particular sport are considered.

Using the criteria provided in the Policy Interpretation, OCR evaluated the benefits, services and opportunities provided to male and female athletes as described below.

Equipment and Supplies

In assessing compliance in this area, 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 general equipment.

Coaching

Under the Title IX regulations at 34 C.F.R. §106.41(c)(5) and (6), in determining compliance for the opportunity to receive coaching, OCR considers three components: (1) the relative availability of coaches and assistant coaches; (2) the training, experience, and other professional qualifications of coaches; and (3) the compensation of coaches for men's versus women's programs. Of these three factors, OCR's primary focus is on the availability of coaches.

In analyzing the availability of coaching, OCR separates the women's from the men's program, determines the full-time equivalent (FTE) number of coaches in each program, computes the ratio of the FTE of coaches to the number of participants in each program, and finally compares the ratio between men's and women's programs to determine any inequity. For co-ed programs, OCR counts the men and women on the team and accords them proportional percentages.

Provision of Locker Rooms and Practice and Competitive Facilities

To assess compliance with the Title IX regulations at 34 C.F.R. §106.41(c)(7), OCR examines the quality and availability of the facilities provided for practice and competitive events; exclusivity of use of facilities provided for practice and competitive events; the availability and quality of locker rooms; maintenance of practice and competitive facilities; and preparation of facilities for practice and competitive events.

Publicity

In determining compliance with publicity available for the athletic program under the Title IX regulations, at 34 C.F.R. §106.41(c)(10), OCR considers the following factors: (1) availability and quality of sports information personnel; (2) access to other publicity resources for men's and women's programs; and (3) quantity and quality of publications and other promotional devices featuring men's and women's programs.

Facts Gathered to Date

The following facts are relevant to OCR's analysis. Unless otherwise indicated, the facts below refer to conditions as of the 2016-17 school year.

Equipment and Supplies

School administrators and coaches told OCR that equipment and supplies were generally provided to teams based on coaches' requests and the Athletic Director's knowledge as to what each sport needs, as informed by experience from previous years.

Generally, players and coaches reported to OCR that the basic equipment (including uniforms) for each varsity team was of good quality, but that freshman and junior varsity teams received hand-me-downs that were of lower quality and were often old or the wrong sizes. This was generally true across both boys' and girls' teams. The Complainant told OCR that prior to the

2015-16 season, the girls' softball team needed new bats, helmets, and uniforms, but that after the Complainant raised the issue with the School, the School purchased new equipment. OCR confirmed with the softball coach for 2016-17 school year that the team generally had the equipment it needed.

However, OCR did identify two areas in which equipment and supplies issues varied based on sex.

First, the football coach reported that with money the team has fundraised in past years, the team had bought a water hydration system, an end zone camera to film games and practice, and video editing software. The football players told OCR that they have a team meeting each Monday during the season to watch the game film from the previous game. OCR did not find any evidence that any girls' team had access to comparable equipment.

In addition, OCR found that School staff were responsible for washing the uniforms of the football and boys' basketball teams, but that players on all girls' teams were responsible for washing their own uniforms.

Availability of Coaching

As part of OCR's review of the availability of coaching, OCR analyzed the number of coaches and their tenure at the School.

OCR found that for the 307 participants on boys' teams during the 2016-17 school year, there were 28 paid coaches and 10 additional volunteer coaches.¹ That is, there was one boys' coach for every 8.1 male participants on those teams, or one paid coach for every 11 male participants.

For the 289 participants on girls' teams during the 2016-17 school year, there were 23 paid coaches and 4 additional volunteer coaches. That is, there was one girls' coach for every 10.7 female participants on those teams, or one paid coach for every 12.6 female participants.

The sports with the largest numbers of coaches were football (8 paid coaches and one volunteer coach) and boys' basketball (4 paid coaches and 3 volunteer coaches). The baseball and softball teams also each had six coaches. The baseball players told OCR that having more coaches enabled them to get more done because the coaches could split them up into smaller groups (each coach was generally responsible for a different position group) and have more instruction. The football players also reported that each varsity coach was responsible for a different position group (e.g. quarterbacks, running backs, lineman, and wide receivers).

At the time of OCR's site visit, four of the eight boys' teams at the School had coaches that had been the head coach at the School for five years or more. The average tenure of the varsity head

¹ For the sake of clarity, the numbers above do not include coaches for co-ed teams because OCR's analysis revealed that there were ten coaches on co-ed teams and the coaches were allocated evenly to sports that had more girls' participants (like swimming and badminton) and sports that had more boys' participants (such as track). That is, if these ten coaches were allocated proportionally to boys and girls based on their participation in each sport, 5 of those coaches would be allocated to boys' athletes and 5 would be allocated to girls' athletes.

coaches for boys' teams was 6.3 years. By contrast, of the seven girls' teams, only one team had a head coach who had been there for five years or more, and there were two first-year head coaches. The average tenure of the varsity head coaches for girls' teams was 2.7 years. As an example, according to the new 2017-18 girls' head soccer coach, as of the date of OCR's visit the girls' soccer team had been led by four different head coaches over the past four years. The 2017-18 boys' head soccer coach told OCR that during his 10 years as the boys' varsity soccer coach, there were five different coaches for girls' soccer. Similarly, as of the date of OCR's visit the girls' softball team had experienced 4 different head coaches over the previous five years.

OCR also found that six of the seven varsity head coaches of girls' teams were walk-on coaches (meaning that they did not work for the District full-time), compared to four of the eight varsity head coaches for boys' teams.

In interviews with each head coach, OCR found that the newer coaches and walk-on coaches were generally less familiar with the School's procedures, such as the procedures for requesting the necessary equipment and for raising money for their team.

As part of OCR's analysis, OCR also reviewed issues related to the availability of coaching during sixth period theory classes. The School offered a sixth period "theory" class for certain sports. In these sports, students had the opportunity to begin working with their coaches during sixth period (the last period of the day) year-round. The School offered sixth period theory classes for boys in four sports (football, baseball, soccer and tennis) and for girls in three sports (soccer, softball and tennis).

OCR gathered evidence regarding whether the sixth period theory class for baseball and softball provided the same level of instruction for girls as it did for boys. The softball and baseball players in the theory class were all technically supervised by the baseball coach because he was a certificated staff member. The girls' softball coach for the 2016-17 year was a campus supervisor and was required to be on campus during sixth period, so he was not available. When students arrived at the field, the baseball coach would take roll for both the boys and girls. After roll call, the baseball coaches would commence working with the boys, and did not work with the girls except to keep an eye on them if no girls' coach was there. The baseball coach told OCR that there were usually at least three boys' coaches available for sixth period.

OCR received varying reports about exactly how often no softball coach was present for all or part of sixth period. The 2016-17 softball coach (hereinafter, the "former softball coach") told OCR that for 2016-17 there was one assistant coach (the freshman coach) who was able to be at sixth period sometimes, but that she was not able to be present once or twice a week. He also reported that she would often be late because of other commitments. The baseball coach told OCR that no softball coach was present approximately five to seven times over the course of the year, and that there were another five to seven times that softball started later for the girls because no coach was there when the girls got there. The softball players interviewed by OCR reported that there were no softball coaches for sixth period a couple of times a month and that many other days a coach would come late. The players on the baseball team provided different reports about how often no softball coaches were there, ranging from a couple times a week to a couple times a month.

The softball players told OCR that until a softball coach arrived, they would sit on the bleachers or play catch off to the side because the softball facilities were locked. The 2017-18 softball coach (hereinafter the “current softball coach”) said that during part of the previous year sixth period served more as a study hall for the girls. The former softball coach told OCR that when there was no direct supervision he believed the girls were just messing around. A School administrator told OCR that until the softball coach arrived the girls would be “getting ready to stretch and warm up.”

In March 2016, two parents complained about the lack of instruction for the girls in softball during sixth period. The District’s Director of Secondary Education told OCR that he was unable to verify that the baseball coach was treating the boys differently than the girls, but no School or District administrators reported speaking to any of the girls on the softball team in order to assess the issue. The Director and the baseball coach also stated that the baseball coach would have girls sit on the bleachers if they were not dressed for practice. After speaking with the baseball and softball coaches and the softball players, OCR found that girls not being dressed for practice was not the primary reason they were sitting on the bleachers and not receiving instruction during sixth period.

The School’s Principal and the Assistant Principal reported that after the issue was raised with the District, they each met with the baseball coach to discuss the issue. OCR did not find any evidence that these meetings resolved the problem. OCR also found that the situation for 2016-17 was comparable to previous years. The baseball coach told OCR that the availability of the softball coaches during sixth period for 2016-17 was actually much better than the previous year, when the softball coaches would not show up or provide advance notice of their absence. One softball player who graduated in 2017 told OCR that the problem of not having a softball coach for sixth period was roughly the same over her last three years (2014-15, 2015-16 and 2016-17).

Provision of Locker Rooms, Practice and Competitive Facilities

The School had general locker rooms for both boys and girls, which were old and not in good condition. Players, coaches and administrators reported that the state of the showers in all of the locker rooms was such that students almost never showered there, and often did not use the locker rooms at all. The School also had several smaller team locker rooms for each sex. The right to use those smaller team rooms rotated among individual teams during their specific season.

A number of students and coaches reported concerns with the quality of practice and competitive facilities. Many of those concerns affected both boys and girls equally. For example, the track was an old, dirt track that did not have the full complement of lanes, and several teams reported concerns with how their scoreboards were functioning.

Other concerns affected girls and boys differently. For example, softball players told OCR that the dirt on the infield of the softball fields was extremely dry in 2016-17 and that it felt like concrete. The former softball coach also told OCR that after the rainy season in the winter, the field was like concrete with sand over it in the spring. School administrators told OCR that the

particular type of dirt on the softball field tended to soak up more water and then harden. The softball players told OCR that it was difficult and painful to slide on the field because it was so hard. The baseball field did not have these problems.

The Assistant Principal and the former softball coach both agreed that in order to soften the field, it would need to be nail dragged, which would pull up the dirt and turn it over. Both the former and current softball coaches also reported that the fields needed to be dragged regularly in order for them to stay soft. Players and coaches reported that the baseball team had a golf cart that the coaches used to drag the baseball field, but that the softball team did not have use of the cart and so was therefore required to drag a heavy metal net manually behind them. One player on the softball team reported that she tried to help drag the field but she had a back injury that made it difficult to do so. The current softball coach reported that it would take ten to fifteen minutes for three girls to drag the field and that he did not feel comfortable dragging the field himself or forcing the players to do it because of the risk of injury. The baseball coach reported that one of the assistant coaches drove the golf cart with the net behind it to drag the baseball fields.

Another issue raised in the investigation was the allotment of the baseball and softball fields. The school had two baseball fields, two softball fields, and a fifth hybrid field that had some elements of a baseball field and some elements of a softball field. The former softball coach told OCR that when he was the coach he had not been told by the School that the fifth field was to be shared, but only learned part of the way through the year that the softball team was supposed to have access to the field. All of the witnesses interviewed by OCR agreed that the softball team did not use the fifth field and that the baseball team used it regularly.

Finally, the School had two gyms, which were generally called the “large gym” and the “small gym.” Several years ago the large gym had received new flooring, bleachers, and a scoreboard. In addition to being smaller, the small gym was older, darker, and had an antiquated scoreboard. Basketball coaches and players reported that both boys’ and girls’ varsity and junior varsity basketball teams played all of their games in the large gym, and that the only team to play games in the small gym was the freshman girls’ team. The freshman boys’ team played all their games in the large gym.

Publicity

Players and coaches generally reported that there was very limited publicity for the School’s athletic teams. They reported that the Associated Student Body (ASB) student group put up posters for some games and that all games were listed in the School’s bulletin. They also reported that the School occasionally did sport-specific rallies, and that there was an assembly each season (fall, winter, and spring) which highlighted all the sports for that season. OCR did not identify a pattern of these publicity opportunities being provided more often to one sex than the other. OCR found that the cheerleaders, dance team, and band performed at varsity football, boys’ basketball, and girls’ basketball games. OCR found no evidence that other teams had voiced an interest in having cheerleaders or band at their games.

The School also did not maintain information about the School’s athletic teams on a school or a district web site. Some coaches, parents, or other volunteers had entered information about their

teams into MaxPreps, a third-party web site. OCR did not find disparities by sex as to how that information was maintained.

Finally, none of the School's teams put together a program for each game that was specific to that game. The baseball coach reported that he put together one program for the year, and a stack of these programs was put out at each game. The football team previously put together a program but discontinued the use of a program for the 2017-18 school year.

Analysis

Equipment and Supplies

As described above, a number of teams reported that equipment and uniforms for non-varsity teams was not in excellent condition. OCR found that this was generally true across all sports. OCR also found that concerns about the need for new softball equipment were resolved after the Complainant raised that with the District.

OCR did, however, find other differences that OCR was concerned constituted disparities favoring male students. Specifically, OCR found that coaches washed the uniforms for the boys' football and basketball teams but not for any girls' teams. OCR also found that the boys' football team had additional equipment that was not available to any girls' teams, including a hydration system, video cameras, and video editing software. The Resolution Agreement therefore provides that the School will ensure that any uniform washing services are provided equitably, and also that the School will equitably share access to equipment such as the hydration system, video cameras, and video editing software.

Coaching

As described above, OCR identified concerns there were several ways in which girls were disadvantaged as to the availability of coaching.

First, the School had a sixth period theory class to provide additional instruction opportunities for certain sports, but these opportunities appeared to be being provided disproportionately to boys. The theory classes were offered for boys in four sports and girls in three sports, but the opportunities for one of the three girls' sports (softball) were limited, because the softball coaches were regularly not available, and because the only coach that was often available was a freshman coach, not the head coach. OCR also found that when the softball coaches were not available, the baseball coaches did not provide meaningful coaching to both teams, which resulted in a situation the softball coaches called a "study hall" and "messaging around." OCR also found that this problem had been going on for several years and had been brought to the attention of the District before, but never resolved.

Second, through a combination of paid and volunteer coaches, OCR found that boys' teams had approximately 15% more coaches per player than girls' sports. There were 38 coaches for boys' teams and 27 for girls' teams. That disparity included both more volunteer coaches (10 for boys' sports and 4 for girls' sports) and more paid coaches (28 for boys' sports and 23 for girls' sports).

sports). Given that there were 38 coaches of boys' teams, if coaches were allocated equitably between girls and boys teams based on the number of participants, there would have been between 36 coaches of girls' teams. Instead, there were 27, meaning, that there was approximately one less coach per girls' sport than there would have been if the coaches were divided proportionally based on the number of athletes of each sex. Having an additional coach for each sport potentially allowed for additional instruction for boys, such as greater instruction specific to each position group as the boys' football and baseball teams described.

Finally, OCR also found that coaches of girls' sports were more likely to be new coaches and walk-on coaches, and that the two of the three largest girls' teams (soccer and softball) had very high levels of coaching turnover. The fact that girls' coaches were more likely to be walk-on coaches meant that the girls' coaches did not have the same opportunities to interact with their players at school during the day, and OCR found that the newer coaches were less familiar with the processes for obtaining equipment and raising money.

In sum, OCR was concerned that female athletes at the School experienced a pattern of disparities in the availability of coaching because girls had less opportunity to receive the additional sixth period theory instruction, because there were fewer coaches per athlete for girls' sports, and because those coaches were more likely to be new and more likely to be walk-on coaches. The Resolution Agreement therefore provides that the District will ensure equitable availability of coaching, including by providing coaching for the sixth period softball theory class and by ensuring that girls' and boys' sports have comparable numbers of coaches per athlete.

Facilities

As described above, OCR found that the quality of both the girls' and boys' general locker rooms was generally poor and that the general locker rooms were not well used.

As to the practice and competitive facilities, a number of the athletic facilities had issues that affected the athletes. Many of those issues affected boys' and girls' teams equally because a majority of sports shared facilities between boys' and girls' teams.

There were some differences in the facilities, however, that affected boys and girls differently. For example, the girls' freshman basketball team was the only team that played games in the small gym, whereas all of the boys' basketball teams played their games in the large gym. Similarly, the softball and baseball teams were apparently intended to share access to one of the fields, but the softball team never used it. In addition, as described above, the softball coaches and players reported that the dirt on the softball field was similar to concrete because it was not maintained properly. OCR also found that only the baseball team had access to a golf cart that was used to maintain the baseball field.

OCR therefore had concerns that there was a pattern of disparities as to facilities that advantaged male students at the School. The Resolution Agreement therefore provides that the boys' and girls' basketball teams will equally share the large and small gyms for games, that the District will provide the softball and baseball teams the opportunity to use the "hybrid" field equally, and

that the District will ensure that the baseball and softball fields are maintained equitably, including by providing access to a cart for the softball team to drag their field.

Publicity

OCR found that the School provided publicity equitably for girls' and boys' teams. As noted above, publicity for all the teams was fairly limited and consistent, in that all games were published in the School bulletin, publicized through occasional posters made by the ASB, and featured in an assembly for each season. OCR found that those main publicity components were provided equally to girls' and boys' sports, including cheerleaders being provided for both girls' and boys' basketball teams. OCR found that any other minor variations in publicity from team to team (such as the existence of a program for one boys' team) did not disadvantage female athletes at the School.

Overall Analysis

OCR bases its compliance determination under the regulation² upon an examination of the following:

- (a.) Whether the policies of an institution pertaining to athletic opportunity are discriminatory on the basis of sex in language or effect; or
- (b.) Whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole; or
- (c.) Whether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity.³

As described above, OCR identified concerns that there was a pattern of disparities disadvantaging female athletes that included aspects of the facilities, coaching, and equipment. In order to reach a compliance determination, OCR would need to conduct additional investigation, including additional witness interviews. However, prior to the conclusion of the investigation, the District articulated an interest in resolving the matter prior to the conclusion of the investigation under Section 302 of OCR's Case Processing Manual, and OCR determined that it was appropriate to do so.

Overall 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 the

² 34 CFR 106.41(c).

³ 1979 Policy Interpretation at VII.B.5

complaint allegations and the information obtained by OCR during its investigation. The Agreement addresses the compliance concerns identified above with respect to equipment, coaching, and facilities.

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 complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

OCR's determination in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Blake Thompson, Civil Rights Attorney, at (415) 486-XXXX or at blake.thompson@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: Brad Walsh, Director of Secondary Education