



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

March 24, 2020

VIA ELECTRONIC MAIL

Mr. Kent Kern
Superintendent
San Juan Unified School District
3738 Walnut Avenue
Carmichael, CA 95608
Email: [XXXXXXXXXX](#)

(In reply, please refer to case no. 09-18-1076).

Dear Superintendent Kern:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against San Juan Unified School District (the District). The complaint alleged discrimination on the basis of sex and disability. Specifically, OCR investigated the following issues:

1. Whether the individual whom the District has designated as its Title IX Coordinator is able to serve this function.
2. Whether the girls' locker room at a District high school (School) is not accessible to individuals with mobility impairments.
3. Whether the interscholastic athletic program at the School discriminates against female students in the following program components:
 - a) Publicity, and
 - b) Locker rooms, practice and competitive facilities.

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 is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal

financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II or ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant, School athletic coaches and administrators. OCR also conducted an on-site athletics facilities inspection and a physical access evaluation of the girls' locker room. Regarding Issue One, after careful consideration of the information gathered in the investigation, OCR concluded that the District did not violate Title IX and its implementing regulations. With respect to Issues Two and Three, the District expressed interest in resolving the areas of concern identified by OCR, prior to the conclusion of OCR's investigation, and OCR determined that such a resolution is appropriate in this case. The applicable legal standards, the relevant facts obtained during the investigation conducted to date, and the reasons for our determination are summarized below.

Issue 1: Whether the individual whom the District has designated as its Title IX Coordinator is able to serve this function.

Legal Standard

34 C.F.R. § 106.8(a) requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX.

Findings of Fact

The Complainant told OCR that the District designated its General Counsel as the Title IX Coordinator for the District. According to the Complainant, the General Counsel is also responsible for handling all complaints from students and parents under the District's Uniform Complaint Procedure (UCP). In addition, the Complainant stated that on the Department's Civil Rights Data Collection (CRDC) website, General Counsel is identified as the District's Title IX Coordinator, Title VI Coordinator, and the Title II and Section 504 Coordinator. The Complainant believes it is a conflict of interest for General Counsel to serve all of these different functions. In addition, the Complainant stated that the Title IX Coordinator is not visible in the School community because no one that the Complainant has spoken to had ever heard of the Title IX Coordinator. The Complainant did not provide OCR with any examples of any Title IX complaints that were mishandled or not adequately investigated by the Title IX Coordinator.

OCR reviewed the District's website and confirmed that the District designated General Counsel as the Title IX Coordinator and the UCP Investigator. The District's website also lists the name, office address, and telephone number of General Counsel as the Title IX Coordinator. OCR also confirmed that on the CRDC website, the District listed General Counsel as the District's Title IX Coordinator, Title VI Coordinator, and Title II and Section 504 Coordinator.

Legal Analysis and Conclusion

The Title IX regulations relating to the Title IX Coordinator, 34 C.F.R. § 106.8(a), require the District to designate at least one employee to effectively carry out its Title IX responsibilities. Specifically, the relevant Title IX regulation, 34 C.F.R. § 106.8(a), states that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities as a responsible employee under Title IX, including any investigation of any Title IX related complaints communicated to such recipient alleging its noncompliance with Title IX. The relevant title IX regulation further states that the recipient shall notify all of its students and employees of the name, office address, and telephone number of the employee or employees appointed to be the Title IX Coordinator. OCR found that the District meets the minimum requirements specified in the Title IX regulations relating to the Title IX Coordinator because the District designated at least one employee, the General Counsel, to carry out the responsibilities of the Title IX Coordinator and the District notified students and employees of the name, office address, and telephone number of the Title IX Coordinator by posting this information on its website. OCR does not have any evidence that shows that the Title IX Coordinator failed to adequately investigate or mishandled a Title IX complaint. For all of these reasons, OCR found that there is insufficient evidence to establish that the District violated Title IX and its implementing regulation in regard to Issue 1.

Issue 2: Whether the girls' locker room at the School is not accessible to individuals with mobility impairments.

Legal Standard

Facility and Program Access

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a recipient/public entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program, service, or activity of the recipient. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. The regulations contain two standards for determining whether a recipient/public entity's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "new construction" and "alterations" while the other applies to "existing facilities." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

New construction and alterations

The Section 504 regulations, at 34 C.F.R. § 104.23, apply to "new construction or alterations," defined as any facility or part of a facility where construction was commenced after June 3, 1977. For the purposes of Title II, "new construction or alterations" is defined as any construction of or alterations to a facility or a part of a facility on or after January 26, 1992. The regulations for each law provide that each facility or part of a facility constructed by, on behalf of, or for the use of the recipient/public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. The

regulations further provide that each facility or part of a facility altered by, on behalf of, or for the use of the recipient/public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Section 504 regulations, at 34 C.F.R. § 104.23(c), specify the *American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped* (ANSI 117.1 – 1961 (1971)) as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977 and before January 18, 1991. Facilities constructed or altered on or after January 18, 1991 are required to comply with the *Uniform Federal Accessibility Guidelines* (UFAS) (Appendix A to 41 C.F.R. subpart 101-19.6). Recipients may choose between applying the *2010 Standards for Accessible Design* (2010 Standards) (28 C.F.R. § 35.151 and 28 C.F.R. part 36, subpart D) or UFAS for any new construction or alteration commenced on or after March 15, 2012. 77 F.R. 14972, 14975 (Mar. 14, 2012).

With respect to Title II, public facilities constructed or altered on or after January 26, 1992 through September 14, 2010 are required to choose application of UFAS or the 1991 *ADA Standards for Accessible Design* (1991 ADA Standards) (28 C.F.R. Part 36, App. A). Public facilities constructed or altered on after September 15, 2010 through March 14, 2012 are able to comply through the application of UFAS, the 1991 Standards, or the 2010 Standards. Effective March 15, 2012, new construction and alterations pursuant to Title II are required to comply with the 2010 Standards. New construction and alterations completed before March 15, 2012 that did not comply with the 1991 Standards or UFAS (i.e., noncompliant new construction and alterations) were also subject to the 2010 Standards. 28 C.F.R. § 35.151(c)(5).

Existing facilities

The Section 504 regulations, at 34 C.F.R. § 104.22, and the Title II regulations, at 28 C.F.R. § 35.150, also apply to “existing facilities.” Section 504 defines existing facilities as any facility or part of a facility where construction was commenced prior to June 3, 1977. Existing facilities for the purposes of Title II are any facility or part of a facility where construction was commenced prior to January 26, 1992. The regulations provide that, with respect to existing facilities, the recipient shall operate its programs, services, and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities (hereinafter “the program accessibility standard”).

Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether a recipient program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The recipient may comply with the existing facility standard through the reassignment of programs, services, and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, services, and activities, when viewed in their entirety, accessible to individuals with disabilities. In choosing among available methods for redressing program inaccessibility, the recipient must give priority to those methods that offer programs, services, and activities to individuals with disabilities in the most

integrated setting appropriate as well as methods that entail achieving access independently and safely.

The concepts of program access and facilities access are related, because it may be necessary to remove an architectural barrier in order to create program access. For example, a program offered exclusively in a particular building on a campus may not be accessible and usable to individuals with disabilities absent the provision of physically accessible features. Under such circumstances, facility accessibility standards may be used to guide or inform an understanding of whether persons with disabilities face barriers to participating in the program, service, or activity provided in a particular facility. In reviewing program accessibility for an existing facility subject to Section 504, UFAS or the 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service. The 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service of a public entity subject to Title II. Specific details of the architectural standards are described below as needed.

Facts Gathered to Date

The Complainant alleged that the girls' locker room at the School is not accessible to people with mobility impairments. The Complainant stated that there is one girls' locker room at the School, and it was built 60 years ago. The Complainant stated that the School never upgraded the girls' locker room to make it accessible and it is not compliant with the requirements of the ADA. The Complainant told OCR that there is a metal bump in the entryway to the girls' locker room that needs to be traveled over to enter the locker room. The Complainant explained that it would be difficult for a person with a mobility impairment to go over the metal bump. The Complainant also stated that there is a heavy metal door with a metal bar on the inside at the entry of the girls' locker room and there is no handicap button to open the door, making it difficult to open for someone in a wheelchair or with metal braces. In addition, the Complainant stated that the lockers and showers are the wrong height for mobility impaired individuals.

The girls' locker room and the boys' locker room are housed in the same building and the locker rooms are right next to each other. The girls' locker room is 4,456 square feet overall and the boys' locker room is 4,496 square feet overall. The locker rooms are mirror images of each other and contain a similar lay out.

The District told OCR that the building that houses the girls' locker room was constructed sometime during 1966, but the exact date of construction is unknown. The District stated that the construction plans for the girls' locker room building were approved by the Division of the State Architect (DSA) on June 22, 1965 and construction followed after the approval. The District stated that the showers and lockers in the girls' locker room have not been modified since its original date of construction in 1966, after the construction plans were approved by the DSA on June 22, 1965. The District does not know the exact date of construction.

The District stated that the construction plans show that modifications were made to the entry, door, and threshold area of the girls' locker room sometime during or around 1998, after the modernization phase 2 of the construction plan was approved on July 1, 1998. The District stated

that the construction plans reflect that the existing doors were replaced with metal doors, but they do not show whether any modifications were made to the threshold. The plans show that a rubber threshold ramp detail was installed. The District stated there are no records that indicate when the existing metal thresholds on the door were installed.

OCR observed that there are four exterior entrance/exit doors in the girl's locker room. None of the four exterior doors contain a handicap push plate allowing someone to automatically open the door by pressing the push plate. Exterior Door 1 is at the southwest corner of the girl's locker room and opens onto the main outdoor area between the girl's locker room and the southeast corner of the C Wing building. Exterior Door 1 is an independently operating double door with a metal center frame between the two door leaves; there are two metal bars on the inside area of the door. Exterior Door 2 is a single door at the northwest corner of the girl's locker room, near the accessible restroom and the shower area, and it leads out to the swimming pool facility. Exterior Door 3 is a single door at the northeast corner of the girl's locker room, next to the shower area, and it leads out to the swimming pool facility. Exterior Door 4 is located on the southeast side of the girl's locker room building, near the larger restroom in the girls' locker room, and it opens to the outside area near the concession stand that is located between the small and large gyms. Exterior Door 4 is an independently operating double door with a metal center frame between the two door leaves and two metal bars on the inside area of the door.

The documentation submitted by the District shows that the threshold height for Exterior Door 1 is .25 inches beveled and the threshold height for the exit side of the door is .5 inches beveled. For Exterior Door 2, the rubber threshold height is .25 inches. For Exterior Door 3, the rubber threshold height is .25 inches. For Exterior Door 4, the threshold height for the entry side of the door is .25 inches beveled and the threshold height for the exit side of the door is .5 inches beveled. OCR did not measure the height of the thresholds for each exterior door. However, OCR observed that the metal threshold for Exterior Door 2, which leads from the girl's locker room into the pool area, may be difficult for a wheelchair to travel over due to its raised height and the slope created by the cement path leading to the threshold. OCR observed that as one approaches the girl's locker room Exterior Door 2 from the outside swimming pool facility, there is an approximate 8% slope at the threshold from the floor of the swimming pool facility to the top of the threshold at Exterior Door 2.

The District also submitted documentation showing the door opening pressure of each of the four doors in the girls' locker room. Regarding Exterior Door 1, the entry side of the door has a door opening pressure of ten pounds while the exit side of the door contains a door opening pressure of eight pounds. The Exterior Door 2 has a door opening pressure of eight pounds. The Exterior Door 3 has a door opening pressure of nine pounds. For Exterior Door 4, the entry side of the door has an opening pressure of nine pounds and the exit side of the door also has an opening pressure of nine pounds. The UFAS standards and 1991 ADA standards do not specify a maximum opening force that is required for exterior doors.

During OCR's onsite visit to the School, OCR opened each of the four exterior doors in the girls' locker room. OCR noted that the doors felt heavy when opening them and that it may be difficult for someone in a wheelchair to open and keep the doors open as he/she enters or exits the girl's

locker room, particularly because the doors feel heavy when opened and there are no handicap push plates near the doors that allow them to be automatically opened.

Regarding the girls' locker room restrooms, the District told OCR that the modifications and upgrades to the restrooms were approved by the DSA on August 25, 2010 and the construction followed thereafter, but the District did not know the exact date of construction. The District stated that the modifications of the restrooms were in accordance to ADA standards, for example providing a stall and a sink to accommodate persons with special needs.

OCR observed that Restroom 1 is located at the north side of the girl's locker room between the Exterior Door 2 leading out to the swimming pool facility and Exterior Door 1. There is only one entrance/exit to Restroom 1, and it contains no doors. Restroom 1 has a level floor made of non-slip material. Restroom 1 has one regular sized toilet stall and one larger sized, accessible toilet stall. According to the construction plans for Restroom 1, the disabled accessible toilet stall was added in 2010 (accessible stall). Restroom 1 contains a motion detector switch that automatically turns on/off the light. The regular sized toilet stall in Restroom 1 consists of one toilet, one paper dispenser, and one small trash can. The accessible stall contains one three foot long grab bar on the wall behind the toilet and another three foot long grab bar on the left hand wall next to the toilet. It also contains a toilet, a paper dispenser on the left wall next to the toilet, and a coat hook on the stall facing side of the stall door. The accessible stall does not have the international symbol of access or any other disabled signage posted on the toilet stall.

Restroom 2 is located at the south end of the girls' locker room. It is older and larger than Restroom 1 and it was not part of the 2010 remodeling project. There are no doors to Restroom 2, and it measures approximately 15 feet by 11 feet. There are two ways to enter/exit Restroom 2. One entrance/exit to Restroom 2 is by the locker room area and the other entrance/exit is by the shower area. The floors of Restroom 2 are level and made of non-slip material. Restroom 2 contains three regular size toilet stalls sitting side by side each other. The toilet stalls in Restroom 2 have paper dispensers and trash bins. Restroom 2 does not contain an accessible stall.

The girls' locker room also contains an open shower area between the lockers and the two doors leading out to the outdoor swimming pool facility. There are no doors to the shower room area and the floor is made of vinyl or some other non-slip material. The shower area contains two rows of six shower poles each, a total of 12 shower poles. Each shower pole can accommodate six students simultaneously. OCR observed that the shower area contains no grab bars, no towel bars or other dry area, and no shower seats available. In addition, OCR observed that the floor in the shower area is level and the shower poles are approximately ten feet apart from one another, providing enough space for a wheelchair to maneuver around the shower area.

Determination

Under Section 504 and Title II, the program accessibility standard applies to an existing facility where construction was commenced prior to June 3, 1977 or January 26, 1992. Based on the District's data, the program accessibility standard applies to the building that houses the girls' locker room because the original date of construction was in 1966. The showers and lockers in the girls' locker room were also built in 1966 when the locker room building was constructed and

were never modified. Therefore, the program accessibility standard also applies to the showers and lockers in the girls' locker room.

Regarding the entryway and door areas of the girls' locker room, OCR found that since there were modifications and upgrades made to these areas sometime after July 1, 1998, pursuant to Section 504 and Title II, the UFAS standards or the 1991 ADA standards apply.

With regard to the door thresholds, additional information is needed to determine what standard applies to the thresholds. According to the District, there are no records of when the existing metal thresholds were installed. Additionally, the construction plans for the modifications made to the door area in 1998 do not reflect whether any modifications were made to the thresholds at that time. If the metal thresholds were constructed in 1966 and no modifications were made to the thresholds in 1998, then the program accessibility standard applies to the thresholds. However, if modifications were made to the metal thresholds in 1998, then the UFAS standards or the 1991 ADA standards apply to the thresholds.

Regarding the restrooms, because Restroom 1 was modified sometime after August 25, 2010 (the exact construction date is unknown), pursuant to Section 504 and Title II, the UFAS standards, 1991 ADA standards or the 2010 standards apply to Restroom 1.

OCR has not completed its investigation regarding Issue 2. However, based on the information obtained thus far, OCR has three compliance concerns regarding the physical accessibility of the girls' locker room at the School. First, the accessible toilet stall in Restroom 1 does not have the international symbol of access or any other disabled signage posted on the stall. The UFAS standards (Section 4.30.5), the 1991 ADA standards (Section 4.30.7), and 2010 standards (Section 213.2, 216.2, 603, and 703) require that accessible toilet facilities be identified with the international symbol of accessibility. Therefore, the fact that Restroom 1 does not contain any disabled signage posted on the accessible toilet stall raises a compliance concern.

Second, OCR has concerns that the four exterior doors in the girls' locker room appear to be too heavy or hard to push open for somebody in a wheelchair or with mobility impairments. UFAS and the 1991 standards do not specify a maximum opening force for exterior hinged doors. However, if the opening force is significant and the door is very heavy an accessibility issue can arise if a person in a wheelchair or with mobility impairments is unable to open the door because it is too heavy. The four exterior doors in the girls' locker room have an opening force ranging from eight to ten pounds, which may be difficult for a person with mobility impairments to open.

Third, OCR has concerns that the metal threshold for Exterior Door 2, which leads from the girl's locker room into the pool area, may be difficult for a wheelchair to travel over due to its raised height and the slope of about 8% created by the cement path leading to the threshold. A person in a wheelchair or with a mobility impairment may be unable to travel over the raised metal threshold on Exterior Door 2 or any other door in the girls' locker room.

Prior to the completion of the investigation, the District expressed an interest in a voluntary resolution of the complaint pursuant to Section 302 of OCR's Case Processing Manual¹ and OCR

¹ See, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf> (last visited on March 24, 2020).

determined this case was appropriate for a voluntary Resolution Agreement (Agreement). To complete the investigation, OCR will need additional information and documentation from the District, including: 1) a full-sized and complete copy of the blueprints for the girls' locker room that specifies the measurements of everything contained in the locker room and 2) an explanation of why the District used the standards specified on the DSA construction plans for the 1998 restroom upgrades and modifications. On March 20, 2020, the District, without admitting to any violation of law, entered into the attached Agreement to resolve complaint issues two and three and address OCR's compliance concerns.

Issue 3: Whether the interscholastic athletic program at the School discriminates against female students in the following program components: a) Publicity, and 2) Locker rooms, practice and competitive facilities.

Legal Standard

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 intercollegiate 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 provide 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)).

Pursuant Title IX and its regulatory guidance at 34 C.F.R. § 106.41, *et. seq.*, OCR examines the following areas of a school district'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.

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) (1979 Policy Interpretation). 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.

Using the criteria provided in the Policy Interpretation, OCR examines the benefits, services and opportunities provided to male and female athletes as follows:

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

Provision of Locker Rooms and Practice and Competitive Facilities

During the 2017-2018 school year, the School's athletics department consisted of the following sports teams which have their seasons during the following times of the year: 1) Fall Sports: football, cross country, girls' golf, girls' volleyball, water polo (separate boys' and girls' team), and girls' tennis, 2) Winter Sports: basketball (separate boys' team and girls' team), soccer (separate boys' team and girls' team), and wrestling (separate boys' team and girls' team), and 3) Spring Sports: softball, baseball, dive (one co-ed team), swim (separate boys' team and girls' team), boys' tennis, boys' golf, lacrosse (co-ed team team)², track (separate boys' team and girls' team), and boys' volleyball.

During the 2018-2019 school year, the School's athletics department consisted of the same sports in the same seasons as the 2017-2018 school year.

Girls' and boys' sports teams both use the following shared facilities: Large Gym, Small Gym, Small Gym stage, stadium field, track, tennis courts, weight room, cafeterias, pools, and team room. Aside from facilities shared by girls' and boys' teams, there are also facilities that are exclusively used by either girls' or boys' teams. These exclusive use facilities are the following: the softball fields (varsity and junior varsity (JV)/freshman field), the baseball fields (varsity and JV/freshman field), the boys' locker room, and the girls' locker room.

² The lacrosse team was initially a separate boys' and girls' team at the start of the 2017-2018 school year, but it was converted into a co-ed team during that year. The lacrosse team remained co-ed during the 2018-2019 school year.

The girls' and boys' golf teams both use off-site golf course facilities for practices and home competitions and OCR did not inspect these facilities.

Regarding the general maintenance of all of the athletic facilities at the School, the District has a maintenance department that maintains the fields, including mowing, weeding, edging, and maintaining the water lines. If a major repair is needed, such as fixing the sprinkler system, a work order is submitted to the District's maintenance department.

Shared Use Facilities

OCR inspected all the shared use facilities used by both girls' and boys' sports teams.

The Large Gym was built around 1966, when the School campus was built, and it is located directly across from the boys' locker room. The Large Gym is regulation size and sports competitions are held in the Large Gym. The Large Gym is used by the boys' and girls' basketball teams (for practices and home games), the boys' and girls' volleyball teams (for practices and home games), and the wrestling teams (for home games). The football team and other athletic teams also use it for warm-ups/practices on rainy days.

OCR found that there were concerns about the quality and maintenance of the Large Gym, such as the lack of air conditioning, the low ceilings, the old floor with dead spots and worn varnish, and the trash and gum around the gym floor.

The Small Gym was built sometime around 1966 and it is located directly across from the girls' locker room and the Large Gym. The Small Gym is not regulation size and is not used for games. The girls' and boys' volleyball teams, the girls' and boys' basketball team, and the girls' and boys' wrestling teams all use the Small Gym for practices. On rainy days, the other outdoor sports teams use the Small Gym as a warm-up room.

OCR found that there were concerns about the lack of air conditioning in the Small Gym and the particle board panels on the ceiling falling down on the floor when a ball hits the ceiling. In addition, OCR found that the roof of the Small Gym sometimes leaks causing the floor to get wet and there is a possible tripping hazard in the Small Gym because there are no sidelines for athletes to put their belongings on, which sometimes causes athletes to trip over belongings on the floor.

The boys' and girls' wrestling teams use the Small Gym stage for practices. OCR determined that there were concerns that the practice area on the stage for the wrestling teams is smaller than the competition mat area in the Large Gym.

With regard to the stadium field, track, tennis courts, weight room, cafeterias, and the pools at the School, OCR did not find any Title IX compliance concerns relating to these facilities based on the evidence obtained thus far during the investigation.

Team Room

The team room is located in the boys' locker room. The team room consists of a square room containing lockers on each wall and in the center of the room there are four rows of two parallel benches (eight benches total) in the shape of a square. There is a total of 120 caged-style lockers in the team room and the size of each locker is the same. OCR found that the only athletics teams that use the team room are the football team, baseball team, the girls' basketball team, and the boys' basketball team.

OCR determined that the baseball program has access to the team room and the baseball athletes are assigned a team room locker if they want one. The baseball athletes only use the lockers in the team room when the sport is in season. OCR found that the baseball program predominantly uses the team room for the lockers and if it is raining, the team room is used for their team talks.

OCR found that the girls' basketball team only uses the team room for pre-game talks with the varsity girls' basketball athletes, which occur on Monday evenings between 5:00 p.m. – 7:00 p.m., when no one else is using the boys' locker room.

OCR also found that the boys' basketball team has access to the team room, but they only use it during home games to change before and after games, for half time meetings, and for after game meetings. The team does not use the lockers in the team room because some lockers are broken, and the remaining lockers are assigned to the football players and baseball players.

OCR determined that the softball program does not use the team room in the boys' locker room. In the past, if the softball teams needed to use a team or meeting room, the former Athletic Director allowed the team to use his classroom as a meeting room three to four times.

Exclusive Use Facilities

OCR also inspected the four facilities that are used exclusively by girls' sports teams or boys' sports teams.

Softball Fields

The varsity softball field is located behind the physical education (PE) practice fields and next to the JV and freshman softball field. The field is fenced in and kept locked when not in use. The dugouts on the varsity field are not completely covered. Each dugout contains two benches enclosed by a rectangular shaped fence that surrounds the benches and contains fencing on the roof. The dugout for the home team has a tarp partially covering the roof so that the area above the benches is covered; the visitor team dug out is fenced in and uncovered. There are three storage containers placed near the varsity softball field that are used by all levels of the softball program. The varsity softball field has a scoreboard, a scorekeeper, and an announcer who sits near the home team dugout. The announcer uses a portable Public Address (PA) speaker system. The softball program has a PA system that is used by both the varsity and the JV softball teams. There are no lights on the field. There is also a shed next to the varsity softball field that was intended to be used as a concession stand. However, the softball program does not use any concession stands or

stations during the softball games. Instead, the JV and varsity softball teams use the shed to store their backpacks and softball gear. OCR determined that, as a normal practice, the softball team athletes use the locker room to change before games or practices. However, on rare occasions, they do use the shed to change.

OCR found that there were concerns that the sprinklers in the infield and outfield areas of both softball fields have been broken or not working properly for the past few years, even though the School put in a work order with the District to have them fixed. OCR determined that there were concerns that the District has not responded to the work order and has failed to fix the sprinklers on the softball fields.

The JV/freshman softball field is located on the southeast corner of the PE practice field, on the opposite side of the JV/freshman baseball field. The field is not fenced in and there is no scoreboard. Instead, there is a scorekeeper for JV and freshman softball games and the scorekeeper sits at a portable table near the home team side. The dugouts are open and uncovered, but they are fenced in to protect the players from the balls. The home team sits on one bench and the visiting team sits on its own bench. There is no lighting on the field.

Baseball Fields

The varsity baseball field is located next to the tennis courts on the northwest corner of the playing field area, which contains both the softball fields and the baseball fields. The field is fenced in and locked when not in use. There is a shed that is used as the concession stand, located outside of the fenced in portion of the varsity field. The shed is used solely by all levels of the baseball program. There is no lighting on the baseball fields. The baseball program has a mobile PA system that they use for the varsity and JV baseball games.

There are three shipping containers on the varsity baseball field, and they are used to store field maintenance equipment and baseball supplies. One of the shipping containers is 8 feet wide by 10 feet long and it houses rakes, shovels, hoes, field marking paints, and bases; this shipping container is the one nearest to the tennis courts. The second shipping container is 6 feet wide by 8 feet long and it stores things such as, baseballs and batting tees. The third shipping container is the largest and it stores field maintenance equipment, including the all-terrain vehicle used to drag the fields, a lawn mower, field drying agent that is used during wet weather, and tarps. The shed located behind the varsity baseball field is used as a snack bar by the team only when they have games. The shed also stores the PA system that the baseball teams use for games. The baseball athletes do not store their belongings or change in the shed and mostly keep their belongings, such as backpacks and gear bags, in the dugout area.

The District maintains the sprinklers on the baseball fields and is responsible for making any repairs. OCR determined that when the baseball teams have had problems with sprinklers in the past and requested that they be fixed, the District has responded to these requests and fixed the sprinklers in a timely manner.

The JV/freshman baseball field is located next to and behind the varsity baseball field. The JV/freshman field is not fenced in and there is no scoreboard on the field. A scorekeeper (a coach or parent) sits in a scorekeeper box and manually keeps score. There is no lighting on the field.

Girls' Locker Room

The girls' locker room was built in 1966 and it is located across from the Small Gym, next to the boys' locker room. The girls' locker room is in the same building as the boys' locker room. There are 985 lockers total in the locker room. Of these lockers, there are three types of lockers: 47 large lockers, 154 medium lockers, and 784 small lockers. OCR observed that the great majority of the doors on the lockers were functional and closed properly.

Boys' Locker Room

The boys' locker room was built in 1966, it is located next to the girls' locker room opposite from the Large Gym, and it has a similar layout to the girls' locker room. There are 348 lockers total in the boys' locker room. The locker room does not contain any large sized lockers equivalent to the ones in the girls' locker room. There are the three types of lockers in the locker room: 30 caged - team room sized lockers; 120 medium lockers; and 198 small lockers. OCR observed that a great majority of lockers in the boys' locker room were not functional because doors were broken, missing, or bent so much that the door could not be closed shut. OCR found that there were concerns that the quality of the boys' locker room is poor because it is old, needs updating, and many lockers in the locker room are broken and need to be replaced.

Publicity

OCR determined that the School conducts some publicity related activities. The current Athletic Director prepares posters for each sport season specifying the date, opponent, and times for all of the games of each athletic team at the School every season and the posters are placed in different areas on campus. The School also has weekly announcements via an email bulletin that lists the games for the athletic teams. There is also a student-run live cable broadcast on YouTube where, if requested, the games for athletic teams are sometimes announced. Information about the names of the coaches for each athletics team are also posted on the School website. The student government group also publicizes information regarding the dates of the games for the athletic teams.

Additionally, every athletics team at the School has access to the online program, MaxPreps. However, only some teams, such as the football team, the girls' and boys' basketball teams, the girls' and boys' soccer teams, the girls' and boys' volleyball teams, the baseball team, and the softball team, use MaxPreps.

Many of the athletics teams initiate their own team website and/or social media account(s) on which they include information about their teams, such as the roster, the date/time/location of matches, pictures of the matches, information about the athletes, and information about fundraising activities. For example, the boys' golf team has its own website and the softball and girls' basketball teams have Facebook pages.

In addition, the School has one main booster club that acts as a fundraising organization for all the student groups at the School, but it does not raise money for each group. Each team has their own individual sport account through the booster club and each team raises their own money from fundraising events that are organized by each coach. For example, the baseball team hosts a golf tournament and participates in a firework selling booth. OCR found that the booster club has supported some teams, such as the football team, the baseball team, and softball team, by giving them loans when needed. OCR also learned that the booster club paid a portion of the reconditioning costs for football gear for the football team.

Regarding the quality of the publicity provided to each athletic team, the majority of the athletic teams rated the publicity for their teams to be fair, adequate, or good. OCR determined that there were some concerns about the lack of publicity for the lacrosse team and the girls' basketball team because the School community is centered around football. However, OCR did not find any concerns that the publicity support that these teams received from the School had any negative impact of the teams.

The School has a sideline cheer team and a band that were both in existence during the 2017-2018 and 2018-2019 school year. The band first formed during the 2017-2018 school year and did not perform during any games for any sport at the School that first year. During the 2018-2019 school year, the band performed during two football games in the fall of 2018. The District stated that during the 2017-2018 school year, the sideline cheer team performed at 12 football games and six home games for the boys' basketball team. The District reported to OCR that during the 2018-2019 school year, the sideline cheer team performed at 13 football games, two home games for the boys' basketball team, and two home games for the girls' basketball team.

OCR learned that there were concerns that the cheerleading team has never performed at the girls' basketball games. OCR found that during the 2018-2019 school year, the first Quad games were played at the School, where all the boys' and girls' basketball games were played on the same day. The lineup for the games involved the JV girls' basketball team playing first, the JV boys' basketball team playing second, the varsity girls' basketball team playing third, and the varsity boys' basketball team playing fourth. OCR determined there were concerns that during the 2018-2019 Quad games, the cheerleaders performed only during the JV and varsity boys' basketball games and they sat down during the JV and varsity girls' basketball games.

OCR learned that the sideline cheerleaders were supposed to perform at the last two games of the night during the 2018-2019 Quad games, regardless of whether the games were played by the boys' or girls' basketball teams.

Crab Feed Fundraiser

OCR found that there were concerns regarding lack of equal opportunity to participate in and obtain proceeds from the School crab feed fundraiser. Specifically, the crab feed fundraiser involves the combined efforts and participation from the boys' and girls' basketball program, boys' and girls' golf program, and SCORE (an academic organization). The money from the fundraiser is distributed to the teams based on the amount of work put into the fundraiser and the tickets sold by each group.

OCR learned that during the 2017-2018 school year, the girls' basketball programs received the crab feed tickets late and had only three weeks to sell them, which resulted in the girls' basketball team selling only 40 tickets but still earning money from the fundraiser. OCR found that during the 2018-2019 school year, the girls' basketball team did not receive notice that tickets were available to be sold for the crab feed fundraiser and only learned about the fundraiser tickets being available on Facebook. At that point, when there were only two weeks left of the season, the girls' basketball team contacted School staff to obtain tickets to sell but was informed them that there were no tickets left to sell, but the team could use a link on the website to obtain tickets. As a result, the girls' basketball team was unable to sell any tickets for the crab feed fundraiser during the 2018-2019 school year and they received \$0 in proceeds from the fundraiser that year. OCR learned that the team's lack of ability to participate in the crab feed fundraiser during the 2018-2019 school year impacted the team because they could not pay off tournament related referee and custodial fees, which amounted to \$5,000 that year. OCR found that the girls' basketball team not receiving any funds from the crab feed fundraiser during the 2018-2019 school year has impacted the team because due to the outstanding fees, they will not be able to participate in tournaments or buy new equipment during the current school year (the 2019-2020 year) until the fees are paid off.

Determination

Provision of Locker Rooms and Practice and Competitive Facilities

OCR analyzed the girls' and boys' athletics program on an overall basis, specifically examining whether the availability and quality of benefits, opportunities, and treatment provided were equivalent for members of both sexes. While analyzing the athletics program at the School, OCR looked at whether the quality, availability, and maintenance of the facilities provided for practice and competitive events at the School were equivalent for members of both sexes.

OCR found that the girls' and boys' sports team use the Large Gym, Small Gym, Small Gym stage, stadium field, track, tennis courts, weight room, cafeterias, and the pools for practices and competitions. The evidence shows that there is equivalent use and access to these facilities for the girls' and boys' teams that use these facilities. While OCR found some concerns with the quality of these facilities, OCR determined that these issues affected boys' and girls' teams equally. For example, the fact that the ceiling panels in the Small and Large Gym fall down on the floor when a ball hits them are issues that equally affect the girls' and boys' volleyball teams and the girls' and boys' basketball teams. Similarly, the lack of air conditioning in the Small and Large Gym equally affects the girls' and boys' volleyball teams and the girls' and boys' basketball teams. The poor quality of the Large Gym floor equally affects the girls' and boys' basketball teams. The fact that the Small Gym stage practice area is smaller than the competition mat area in the Large Gym equally affects the girls' wrestling team and the boys' wrestling team. Because issues concerning the quality of the shared use facilities mentioned above equally affected boys' and girls' teams at the School, OCR did not find any disparities with regard to these facilities.

With regard to the team room, although it is used by both boys' teams (the football, the baseball team, and the boys' basketball team) and one girls' team (girls' basketball team), OCR found that there were features about this facility that affect the boys' and girls' teams differently due to the location of the team room in the boys' lockers room, which makes it more difficult for the girls'

teams to access. The football and baseball teams use the team room lockers and the boys' basketball team uses it to change before and after home games and for team meetings during and after games. Even though the varsity girls' basketball team uses the team room for pre-game meetings, this is the only time the team uses it and it is used on Monday evenings between 5:00 p.m. – 7:00 p.m., when no one else is using the boys' locker room. Additionally, the softball teams have had to use the former Athletic Director's classroom for meetings because there is no team room available for the team. Unlike the team room in the boys' locker room, there is no team room attached to the girls' locker room and no other space available for use by the girls' teams on the School campus. In addition, because the lockers in the team room are bigger than the lockers in the girls' and boys' locker room, the girls' teams do not have access to the larger lockers. For all of these reasons, OCR found that the team room in the boys' locker room creates a disparity that denies an equal opportunity for female athletes.

OCR also analyzed the facilities at the School that are used exclusively by girls' sports teams or boys' sports teams. These facilities include the softball fields, the baseball fields, the boys' locker room, and the girls' locker room. OCR compared the quality, availability, and maintenance of the softball fields with the baseball fields. OCR found that generally, there were many similar, comparable features between the two softball fields and the two baseball fields. For example, the softball fields and baseball fields both have dugouts and PA systems, and none have lights. Only the varsity softball and baseball fields contain wireless scoreboards. The varsity softball and baseball fields are fenced in and secured when not in use. Both the softball and baseball programs have three storage containers to store equipment and one shed located by each varsity field. While the use of the sheds is different, (varsity baseball uses it as a concession stand and the softball team uses it as storage or changing room), there is no disparity between the programs with these specific items.

When comparing the dugouts between the softball fields and the baseball fields, however, there were differences. Specifically, while the dugouts for both the JV/freshman and varsity baseball fields are enclosed and covered with sun protection, the dugouts on the JV/freshman softball fields are not enclosed or covered; for the varsity softball field, only the home team dugout is partially covered by a tarp. OCR found that the lack of or limited sun protection on the softball field dugouts creates a disparity that could limit and affect the softball athletes' ability to equally compete compared to the baseball athletes who receive complete sun protection during games and practices. OCR found that this creates a disparity that disadvantages female athletes and may result in a denial of equal opportunity for female athletes.

Another difference between the dugouts is the fence coverage to protect the athletes from getting hit by a ball. While the dugouts on both baseball fields contain partial fences in front of the dugouts, they are covered and lower into the ground. In contrast, the softball dugouts on both the varsity and JV/freshman fields are completely fenced in and the fence rises high enough to provide complete protection from getting hit by a ball. OCR found that the difference in the fence protection between the dugouts does not create a disparity or disadvantage for the male athletes. OCR also has concerns about the District's maintenance of the sprinklers on the grass portion of the softball fields and the baseball fields. OCR found that for the past few years, the sprinklers on the softball fields have been broken or not working properly, even though the School put in a work order with the District to get the sprinklers repaired. In contrast, when the sprinklers on the

baseball fields broke or needed repairs in the past, the District has always fixed the sprinklers in a timely manner. OCR determined that the difference in the District's response to requests for repairs on the baseball field compared to the softball fields creates a disparity that disadvantages female athletes and may result in a denial of equal opportunity for female athletes.

Finally, OCR found that the lockers in the boys' locker room are in much worse condition than the lockers in the girls' locker room. For example, the great majority of lockers in the boys' locker room are not functional because doors are broken, missing, or bent so much that the door cannot be closed shut. By contrast, the lockers in the girls' locker room are not broken, there is no graffiti on the lockers, there are no dents or bends on the lockers, and the majority of the locker doors are functional and close properly. OCR found that even though there is a difference in the quality of the boys' and girls' lockers, the disparity is not a pattern and is not substantial enough in itself to deny equal athletic opportunities to male athletes.

Overall, with regard to the facilities for practices and competition, OCR has concerns that there are several disparities, which are described above, that disadvantaged the female athletes at the School. OCR is concerned that these disparities may result in the denial of equal opportunity to female athletes. In order to complete the investigation, OCR would need to interview students or conduct a student survey, interview additional coaches, and conduct an additional onsite investigation. Prior to OCR concluding its investigation of the complaint, the District expressed an interest in resolving the complaint and OCR agreed that it was appropriate to do so. The Agreement, which is attached, incorporates remedies to address the concerns mentioned above.

Publicity

Regarding publicity for the athletics teams at the School, OCR found that the School provides publicity for all of the athletics teams was fairly limited and consistent. Publicity for the teams was provided through student government, the School's email bulletin, posters during each sports season, programming such as the student run cable broadcast, online websites and team specific social media accounts.

Publicity for the athletic teams is also provided through cheerleading. OCR found that during the 2018-2019 school year, there is evidence that raises concerns that the cheerleaders only performed during the games of the JV and varsity boys' basketball teams and did not perform during the JV and varsity girls' basketball teams. The lack of cheerleading support for the girls' basketball team could create a disparity that advantages male athletes over female athletes. OCR found that this disparity may result in the denial of equal opportunity to female athletes.

OCR also learned that the School has a booster club that provides each athletics team with a sports account in which each team can deposit money obtained through fundraising efforts. The booster club further provides loans to both girls' and boys' athletic teams and therefore, OCR found that the booster club provided equal publicity support to both boys' and girls' teams. OCR notes that booster club paid a portion of the reconditioning costs for football gear for the football team. At this point in the investigation, OCR does not have sufficient evidence regarding whether or not any girls' teams received any monetary support from the booster club or whether any variations in the support provided by the booster club to boys' and girls' teams disadvantaged female athletes.

at the school. For this reason, OCR did not find any disparities concerning the publicity efforts provided by the booster club.

Crab Feed Fundraiser

OCR learned that multiple athletic teams, including the boys' and girls' basketball team participate in an annual crab feed fundraiser. OCR learned that during the 2018-2019 school year, the girls' basketball team did not receive notice of the availability of the tickets to sell for the crab feed fundraiser while other teams had and were able to sell tickets before the girls' basketball team. OCR found that due to this delay in notice, the girls' basketball team was unable to sell any tickets for the fundraiser and was not able to benefit from the crab feed fundraiser. As a result, the lack of funds received impacted the girls' basketball team's ability to pay off tournament participation fees and purchase new equipment during the 2019-2020 school year. OCR determined that the girls' basketball team's inability to participate in and obtain funds from the crab feed fundraiser during the 2018-2019 school year creates a disparity that favored the male athletes over female athletes, as the male athletic teams were able to participate in the fundraiser and received funds to support their programs.

Prior to OCR concluding its investigation of the complaint, the District expressed an interest in resolving the complaint and OCR agreed that this resolution was appropriate. The Agreement, which is attached, incorporates remedies to address the concerns mentioned above.

Conclusion

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.

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

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

With regard to Issue One only, the Complainant has a right to appeal OCR's determination 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.

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 Sewali Patel, Civil Rights Attorney, at 415-486-XXXX or sewali.patel@ed.gov.

Sincerely,

/s/

Kana Yang
Team Leader

cc: Linda Simlick, Counsel for District (via email only)

Enclosure