



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

May 22, 2019

VIA ELECTRONIC MAIL

Ms. Blanca Cavazos
Superintendent
Taft Union High School District
Taft, CA 93268
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(In reply, please refer to # 09-18-1344.)

Dear Superintendent Cavazos:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Taft Union High School District (the District). The Complainant alleged that the District discriminated against students on the basis of sex.¹ OCR investigated whether the District discriminates against female students in the interscholastic athletic program at Taft High School (the School) because it does not provide female student athletes with locker rooms and practice and competitive facilities that are equivalent as the facilities that are provided to male student athletes, specifically the softball field does not have a lighted practice and competitive facility while the baseball field is furnished with lights.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The District is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

OCR gathered evidence by reviewing documents provided by the Complainant and the District, and by issuing a survey to student athletes, interviewing student athletes, coaches, and administrators, and conducting an onsite facilities inspection at the School. Prior to OCR completing its investigation, the District voluntarily agreed to address the areas of concern identified by OCR with respect to the issue investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

¹ OCR previously provided the District with the identity of the Complainant. We are withholding his name from this letter to protect his privacy.

Legal Standard

Pursuant Title IX and its regulatory guidance at 34 C.F.R. § 106.41, *et. seq.*, OCR examines the following areas of a school'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 in the provision of locker rooms and practice and competitive facilities. 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. 34 C.F.R. §106.41(c)(7) and 1979 Policy Interpretation.

Facts Gathered to Date

Based on the District's data response and OCR's onsite visit, OCR found the School utilized 21 facilities for practice and competition and locker rooms. These included: Mullen Gym; Mullen Gym Locker Room for boys; Mullen Gym Varsity Girls' Team Room; Mullen Gym Varsity Boys' Team Room; Farlow Gym; Farlow Gym Locker Room for girls; Farlow Gym Mirror Room; Martin Memorial Stadium; Soccer Fields; Patterson Track; Tennis Courts; Mickey Rolings Softball Complex; Monty Reedy Baseball Fields; Competition and Dive Pool; Competition and Dive Pool Bathroom for girls; Competition and Dive Pool Bathroom for boys; Buena Vista Golf Course; Music Building Girls' Locker Room; Music Building Boys' Locker Room; Athletic Weight Room; and, Physical Education (PE) Weight Room.

Girls' and boys' sports teams use Mullen Gym, Farlow Gym, Farlow Gym Mirror Room, Martin Memorial Stadium, Soccer Fields, Patterson Track, Tennis Courts, Competition and Dive Pool, Buena Vista Golf Course, Athletic Weight Room, and PE Weight Room. According to the District, it could not locate specific policies or procedures regarding how the School determines the use and availability of practice and competitive facilities. However, OCR learned through interviews with the Dean of Athletics and two former Athletic Program Leads that the coaches discuss how to share facilities and create a rotating schedule for their teams' use. For instance, girls and boys both play basketball in the winter, and every week, the teams switch between practicing in Mullen Gym and Farlow Gym. This rotating practice was also described by a student athlete in her response to OCR's survey. Another example of shared use of a facility occurs when a coach signs up to use the Athletic Weight Room for a certain day. According to the Dean of Athletics and two former Athletic Program Leads, there have not been any issues regarding the shared use of facilities.

Aside from facilities shared by girls' and boys' teams, there are also facilities that are exclusively used by either girls' or boys' teams. These include the Competition and Dive Pool bathrooms for girls and boys, Music Building Locker Rooms for girls and boys, Varsity Team Rooms for girls and boys in Mullen Gym, and the girls' locker room in Farlow Gym and the boys' locker room in Mullen Gym. Many of these single sex facilities are nearly identical or had minor differences. For instance, the Competition and Dive Pool bathroom for girls and boys were mirror images of each other and only differed in that the girls' bathroom contained two stalls and the boys' bathroom contained one stall and one urinal. Where there were disparities, for instance, in the size of the PE lockers in Farlow and Mullen Gyms and in the Varsity Team Rooms, students did not express any concerns regarding their respective facilities. 89.75% of the 78 student athletes who participated in OCR's survey rated their locker rooms as Excellent or Good, and there was no meaningful difference between male and female survey respondents regarding their locker room facilities. Additionally, OCR learned through focus groups with baseball and softball players that they tend to carry their athletic equipment throughout the day or use their school lockers, a classroom, or their cars to hold their equipment, rather than use their respective locker rooms in Farlow or Mullen Gyms. The baseball and softball players also told OCR that while they can change for practice in their respective locker rooms, several players change elsewhere, for instance the dugout, restrooms, or in their cars.

The softball and baseball fields are also exclusive use facilities. The freshmen/sophomore, junior varsity (JV), and varsity girls' softball teams use the two softball fields, located on-campus. The softball players and coach told OCR that the quality of the fields is excellent and the facilities are well maintained. The softball team does not have to take many actions to prepare the field for practice and games, though they rake and level the fields and place mats near the dugouts as needed.

There is an electronic scoreboard for each of the two softball fields. The JV scoreboard does not work because last year, a part was taken out of it to be placed in the varsity scoreboard so that the latter could function.

Neither softball field has lights, which impacts the softball players' practice time. Softball practice begins after school at around 3:30 PM and cannot continue after sundown, which

depending on the time of year is around 5:30 PM. According to the Softball Coach, at certain times of the year, softball practice is about 45 to 60 minutes long, which is not enough time. The Softball Coach told OCR that if there were lights on the fields, he would extend practice to 6:30 or 7:00 PM. The lack of lights also requires softball games to start earlier so they finish before sundown, and thus, the softball players play in hotter daytime temperatures rather than playing at night. In addition, an earlier start time makes it more difficult for spectators who work to attend the games.

The softball fields each have one set of bleachers behind home plate. According to the softball players and coach, fans quickly fill up the provided spectator seating and find seats in the outfield, which can make it harder for softball players see.

The varsity softball field does not have a press box. The announcer for varsity softball games brings and sets up his own table and chair by the home plate dugout on the varsity field. He connects his equipment to the public address system at the softball field.

The bathrooms and concession stand for the softball fields are downstairs by the track. According to the softball players and coach, the players change clothes in the bathroom, which is small and contains three stalls. The softball players said the bathroom is dark and they prop open the door to allow sunlight to shine in. The Softball Coach told OCR that the concession stand is not open during softball games. The Dean of Athletics told OCR that the concession stands at the various athletic facilities are usually open during games.

There is one storage shed near the batting cages that stores giant screens, including pitching screens. The storage shed is smaller than the nearby batting cage and dugout. The Softball Coach told OCR that the softball field has closets compared to the storage building for the baseball teams.

The freshmen/sophomore, JV, and varsity boys' baseball teams use the two baseball fields located off-campus, across the street from campus. According to the baseball focus group, the freshmen/sophomore and junior varsity baseball teams occasionally also use the adjacent soccer fields for baseball practice. The baseball players and coach told OCR the quality of the fields are high or excellent and are well maintained. The baseball team does not have to take many actions to prepare the fields for practice and games, though they rake, take tarps off the mounds, and put on bases as needed.

There is an electronic scoreboard for each of the two baseball fields. The baseball players told OCR that the two scoreboards worked on and off last year, and the Baseball Coach reported the JV scoreboard does not work while the varsity scoreboard typically works.

Both the JV and varsity baseball fields have functional lights, which are manually turned on. OCR counted seven poles of lights for each field. The baseball teams practice from after school until 6:00 or 6:30 PM, and they are able to use the lights to practice after sundown.

The baseball fields each have three sets of bleachers behind home plate, with one row of bleachers directly behind home plate, and the other two sets flanking the middle set of bleachers.

The Baseball Coach told OCR that spectators sit on the bleachers and also find other places to sit.

The varsity baseball field has a press box, located on the second floor of the building by the varsity field. The announcer for varsity baseball games does not need to bring or set up any announcing equipment, such as a table. There is a public address system at the baseball field.

The baseball field bathrooms and concession stand are located on the first floor of the building by the varsity field. The Baseball Coach told OCR that the snack bar is open for all games. The baseball players described the snack bar and bathrooms as clean.

There is a large equipment building located between the two baseball fields, and based on OCR's onsite inspection, it is larger than the home or visitor dugout on the fields. The baseball players told OCR that the team stores large items in the building, including nets, bats, and pitching machines.

Analysis

OCR analyzed the girls' and boys' programs on an overall basis, specifically examining whether the availability and quality of benefits, opportunities, and treatment provided were equivalent for members of both sexes. OCR found that girls' and boys' sports teams use Mullen Gym, Farlow Gym, Farlow Gym Mirror Room, Martin Memorial Stadium, Soccer Fields, Patterson Track, Tennis Courts, Competition and Dive Pool, Buena Vista Golf Course, Athletic Weight Room, and PE Weight Room. The evidence shows there is equivalent use and access to these facilities for the girls' and boys' teams that use these facilities, and thus, OCR does not find a disparity for the girls' and boys' teams that use these practice and competitive facilities.

While the facilities described in the preceding paragraph are joint-use facilities by both girls' and boys' teams, the facilities also contain separate locker rooms and restroom facilities for boys and girls. OCR analyzed these separate-use facilities, specifically the Competition and Dive Pool bathroom for girls and boys, Varsity Team Rooms for girls and boys in Mullen Gym, the girls' locker room in Farlow Gym and the boys' locker room in Mullen Gym, and Music Building Locker Room for girls and boys. OCR found these facilities to be nearly identical and, where there are differences, they do not create a negative impact. For instance, the sizes of girls' and boys' PE lockers in Farlow and Mullen Gyms and in the varsity team room differ, but the size difference has no negative effect. Additionally, based on the survey and baseball and softball focus group data, boys and girls have equivalent availability and benefit from their respective lockers. Thus, OCR found that any differences in these facilities are negligible and do not rise to the level of a disparity.

However, OCR was concerned with a disparity in the opportunity to female players compared to male players with regard to the softball facility. First, the evidence shows the softball field does not have lights, which shortens the length of practice time and opportunity for spectator support for female players as compared to male baseball players who can practice and compete after sundown. Second, the softball field does not have a press box, which requires the announcer to set up his own table and chair by the home plate dugout in order to announce varsity softball

games. In comparison, the announcer for the varsity baseball games has a press box above the concession stand and bathrooms. Third, the softball fields do not have their own bathrooms or concession stand, so softball players and spectators use the bathrooms and concession by the track, and OCR had concerns about the quality and availability of the bathrooms and concessions. According to the softball players, the bathrooms are small and not well lit. OCR received some conflicting evidence regarding whether the concession stand by the track is open during softball games, with the Softball Coach stating it is not open and the Dean of Athletics stating concession stands at the various athletic facilities are usually open during games. However, OCR did not receive conflicting evidence about the concession stand at the baseball fields, which, according to the baseball players, are open during baseball games. Fourth, the softball fields have one set of bleachers each, and spectators sit in the outfield, which the Softball Coach says impedes softball players' vision. In contrast, each of the baseball fields has three sets of bleachers. Fifth, the softball fields have less storage space, a storage shed, in comparison to the storage building between the two baseball fields.

Prior to concluding the investigation and to address the issue 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 complaint allegation and the information obtained by OCR during its investigation.

Under the Agreement, the District will ensure that the softball fields have equivalence with the baseball fields in terms of lighting, storage space, a press box, concession hours, and bleacher seating. Additionally, the District will ensure that the lighting at the women's bathroom by Patterson Track provides full illumination of the interior space.

Conclusion

Based on the commitments made in the 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 resolution 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 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.

Please be advised that the District may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint.

resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee, Civil Rights Attorney, at 415-486-XXXX.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure (1): Agreement

cc: Lauren Lyman and Trevin Sims, attorneys for the District (via email only)