

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA



April 19, 2021

VIA ELETRONIC MAIL

superintendent@cusd.claremont.edu

Dr. Julie Olesniewicz
Interim Superintendent
Claremont Unified School District
170 West San Jose Avenue
Claremont, CA 91711

(In reply, please refer to OCR case number 09-20-1188)

Dear Interim Superintendent Olesniewicz:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Claremont Unified School District (Recipient). The complaint alleged that the Recipient discriminates against females on the basis of sex in its athletics program at Claremont High School (School). Specifically, that the Recipient discriminates against females in the provision of 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. §§ 1681-1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex under any education program or activity receiving Federal financial assistance. The Recipient receives funds from the Department and is therefore subject to Title IX and the regulation.

To investigate this complaint, OCR reviewed information provided by the Complainant and Recipient.

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, intercollegiate, club, or intramural athletics offered by a recipient of federal financial assistance, and no such Recipient shall provide any such athletics separately on such basis. As a means of assessing compliance under the regulations, OCR follows its Policy Interpretation on Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413, et seq. (1979). Although the Policy Interpretation focuses on intercollegiate athletics, OCR applies the same general principles to high school athletic programs.

In its investigation, OCR examined the provision of locker rooms, practice and competitive facilities following components of the Recipient's athletic program. OCR examined 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 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 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. Using the criteria provided in the Policy Interpretation, OCR examines the benefits, services and opportunities provided to male and female athletes.

Provision of Locker Rooms and Practice and Competitive Facilities

In assessing compliance with respect to locker rooms and practice and competitive facilities under 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.

Factual Findings to Date

According to the complaint, the School's softball field did not have a level outfield or a clubhouse with storage. There was also only one batting cage that was in poor condition. The varsity girls' softball field also did not have a scoreboard or covered dugouts. In addition, there were no working water fountains. The complaint further indicated that the girls' restrooms next to the softball field does not have locking stalls, mirrors or soap, and it has a leaking roof. The complaint added that the closest girls' locker room is a quarter of a mile away and is only accessible when the coaches are present.

The Recipient stated that the School's varsity boys' baseball team practices and plays on a field on campus. It described the field having two batting cages with lights and a small club house that is used a locker room, and a scoreboard. The Recipient stated that the time OCR informed it of this complaint that it had previously received a complaint with a similar allegation and the Recipient was reviewing its response to the complaint.

Determination and Conclusion

Based on the information gathered to date, OCR has concerns about the varsity girls' softball facility, specifically, the location and quality of the softball field, including the lack of a scoreboard and covered dugouts, compared to the location and quality of the baseball field, along with the clubhouse, batting cages, and scoreboard. However, prior to the conclusion of OCR's investigation, the Recipient requested resolution under section 302 of the OCR Case Processing Manual (CPM) and OCR determined that it would be appropriate to offer to resolve the complaint via a voluntary agreement pursuant to section 302(b) of the CPM.¹ To address the issues alleged in the complaint, on April 19, 2021 the Recipient, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement) which is aligned with the complaint allegation.

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 allegation. OCR will monitor the implementation of the Agreement until the Recipient 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 Recipient'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 Recipient 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

¹ Case Processing Manual (Aug. 28, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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.

OCR would like to thank you and your counsel, Lexe Davidson, for your cooperation and assistance in resolving this case. If you have any questions regarding this letter, please contact OCR Investigator Robert Danese at robert.danese@ed.gov.

Sincerely,

/s/

Kana Yang
Team Leader

Enclosure

cc: Lexe Davidson, Senior Counsel