



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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

November 8, 2021

VIA ELECTRONIC MAIL

Dr. John Thompson
Superintendent
New Haven Unified School District
34200 Alvarado-Niles Road
Union City, CA 94587

(In reply, please refer to OCR case number 09-21-1328.)

Dear Superintendent Thompson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the New Haven Unified School District (District). The complainant¹ alleged discrimination on the basis of sex. Specifically, OCR investigated the following issues:

1. Whether the District discriminates against women on the basis of sex in its athletics program at James Logan High School (School) with regard to the provision of equipment and supplies. Specifically, whether the men's basketball team is provided with training equipment (a rebound machine) that the women's team is not permitted access to.
2. Whether the District failed to respond adequately to the complainant's internal complaint to the District regarding this issue.

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 District receives funds from the Department and is therefore subject to Title IX and the regulation.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the complainant. OCR also interviewed the complainant and the District's legal counsel.

¹ OCR previously provided the District with the identity of the complainant. We are withholding their names from this letter to protect their privacy.

Prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM),² and OCR determined it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

Fact Gathered To Date

In the complaint and during an interview with OCR, the complainant explained that men's varsity basketball team was provided with a training tool, a rebound machine, that the women's varsity basketball team was not provided with. The complainant was only aware of this one piece of equipment with men's varsity basketball program that was not provided to the women's basketball program. The complainant was not aware of any other disparities with equipment and supplies with the other interscholastic programs at the School.

According to the complainant, she sent out an email on April XX, 2021, to the women's basketball coaches inquiring about the purchase of the rebound machine for the men's basketball team and who could have access to use the machine. The women's basketball coach responded that because the men's basketball coach purchased the rebound machine, the women's basketball team would not have access and would need the approval of the men's basketball coach to use it. On April XX, 2021, the complainant emailed the School's Athletic Director, Principal, Title IX Coordinator and other District administrators about the legality of denying the women's basketball team access to the rebound machine. The Principal responded that he would look into the matter. He also provided the complainant with a link to the District's Title IX information and how to file a Uniform Complaint. On May X, 2021, the Principal responded in an email to the complainant that because the purchase of the rebound machine was not funded by the District, the District had no obligation to make a rebound machine available to the women's basketball team, or to consider generally whether the provision of equipment and supplies was inequitable. The Principal stated that the men's team used fundraising, donations, and coaches' dollars to purchase the machine. The Principal also proposed that the District could repair an older machine for use by the women's basketball team. The District conceded that certain employees may have made misstatements concerning what Title IX requires, but the District denied that any inequitable access to equipment actually occurred.

Issue 1: Whether the District discriminates against women on the basis of sex in its athletics program at the School with regard to the provision of equipment and supplies. Specifically, whether that the men's basketball team is provided with training equipment (a rebound machine) that the women's team is not permitted access to.

² Case Processing Manual (Aug. 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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 District 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 the area of equipment and supplies, OCR examines whether the availability and quality of benefits, opportunities, and treatment provided were equivalent for members of both sexes. Equivalent is defined as equal or equal in effect. In accordance with the 1979 Policy Interpretation, OCR compares components of the men's program and the women's program on an overall basis, not on a sport-by-sport basis that would compare, for example, the men's basketball uniforms and the women's basketball uniforms. Where disparities were noted, OCR considers whether the differences 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.

Equipment and Supplies

In assessing compliance with respect to equipment and supplies under the Title IX regulations, at 34 C.F.R. § 106.41(c)(2), OCR considers the quality, suitability, amount, maintenance, replacement, and availability of equipment and supplies. Equipment and supplies include uniforms, other apparel, sport-specific equipment and supplies, instructional devices, conditioning and weight training equipment, and general equipment.

Legal precedent establishing that the source of funding does not alleviate a recipient from Title IX's requirement to provide equivalent benefits derives from *Chalenor v. University of North Dakota* (291 F.3d 1042 at 1048, "[A] public university cannot avoid its legal obligations by substituting funds from private sources for funds from tax revenues. Once a university receives a monetary donation, the funds become public money, subject to Title IX's legal obligations in their disbursement."

Determination

The complainant stated that the women's basketball program was not provided a rebound machine, a piece of equipment made available to the men's basketball team. The information provided to OCR indicated that the rebound machine was purchased by the men's basketball program and thus, the women's basketball team would not be able to access it. OCR raised concerns with the District that the District's interscholastic program at the School may not be consistent with the relevant Title IX regulatory language and legal precedent with respect to the equitable provision of equipment and supplies, regardless of the source of funding. Title IX requires that equitable benefits, including equipment and supplies, be provided to both male and female team irrespective of the source of the funds for those benefits. OCR had concerns with the provision of a rebound machine for the men's basketball team, but not for the women's basketball team, and their inability to access the rebound machine. However, prior to the conclusion of the investigation of this issue, the District expressed an interest in a voluntary resolution and OCR determined that pursuing a such a resolution was appropriate to resolve the concerns regarding Issue 1.

In order to complete this investigation, OCR would need to gather additional data regarding equipment and supplies for the other interscholastic athletics program at the School. OCR would also need to request additional information, including interviews with School site administrators, staff, coaches, and student athletes. Additionally, OCR would need to conduct an on-site review of the equipment and supplies currently at the School. On November 3, 2021, the District, without admitting to any violation of law, entered into the attached Resolution Agreement (Agreement) to resolve Issue 1 and address OCR's compliance concerns.

Issue 2: Whether the District failed to respond adequately to the complainant's internal complaint to the District regarding this issue.

Legal Standards

OCR evaluates the appropriateness of a District's response to notice of sex discrimination by examining reasonableness, timeliness, and effectiveness. What constitutes a reasonable response will differ depending upon the circumstances. However, in all cases the District must conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, remedy the effects of the discrimination, and take steps to prevent the discrimination from recurring.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the District does not tolerate discrimination and will be responsive to any student reports of discrimination. The District also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Determination

With respect to Issue 2, the complainant raised a concern about the women's basketball team's inability to access the rebound machine to the Athletic Director, the School Principal, Title IX Coordinator and the Superintendent. The Principal responded that the because the rebound machine was not purchased by the District, the machine did not have to be provided to the women's basketball team and offered the women's basketball team an alternative solution. OCR evaluates the appropriateness of a District's response to notice of sex discrimination by examining reasonableness, timeliness, and effectiveness. In this instance, the complainant raised a concern about sex discrimination with the men's and women's basketball programs to the several staff and administrators in the District and the School Principal responded to the complainant. However, OCR has a concern as to whether the response was reasonable and effective and whether the District conducted an impartial inquiry designed to reliably determine what occurred. Prior to the conclusion of the investigation of Issue 2, the District expressed an interest in a voluntary resolution and OCR determined that pursuing a such a resolution was appropriate to resolve the concerns regarding Issue 2.

In order to complete this investigation, OCR would need to gather additional data about the District's response to complainant's concern about the provision of the rebound machine to the men's basketball team and not the women's basketball team, including the interviews with District staff and administrators. On November 3, 2021, the District, without admitting to any violation of law, entered into the Agreement to resolve Issue 2 and address OCR's compliance concerns.

Overall Conclusion

To address the issues alleged in the complaint, the District without admitting to any violation of law, entered into the enclosed Agreement, which is aligned with the complaint allegations and the information obtained by OCR during its investigation.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the complainant concurrently. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as

such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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

If you have any questions about this letter, please call our office at 415-486-XXXX or robert.danese@ed.gov.

Sincerely,

/s/

Kana Yang
Team Leader