



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

July 16, 2021

VIA ELECTRONIC MAIL

Ms. Susan Penrod
Superintendent
Seaside School District
2600 Spruce Drive Suite 100
Seaside, OR 97138

(In reply, please refer to OCR Complaint No. 10-19-1122.)

Dear Superintendent Penrod:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint, filed on March 4, 2019, against the Seaside School District (District). The complaint alleged that the District discriminated against female students on the basis of sex in the athletics programs at Seaside High School (School). OCR investigated whether the District discriminated against female students on the basis of sex in the provision of locker rooms, practice and competitive facilities in the School's athletics program.

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 District and the Complainant. OCR also conducted interviews of the Complainant, athletic coaches, other School staff, conducted focus groups of varsity and junior varsity (JV) athletes, and conducted a two-day site visit in November 2019. OCR also conducted an online survey of student athletes. Based on the facts gathered to date, OCR has identified compliance concerns related to the equitability of the girls' softball and boys' baseball facilities. The applicable legal standards, facts gathered to date, and resolution of this matter are summarized below.

Legal Standard

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.

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. 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.

Facts Gathered to Date

The complaint focused on the alleged inequitable softball facilities as compared to the baseball facilities. Specifically, the complaint focused on the facilities located at Broadway Field. Broadway Field is a multiuse field used by the School's football, soccer, baseball, and softball programs. The softball field is located on the northwest corner of Broadway Field and overlaps with the football/soccer field. The baseball field is located on the northeast side of Broadway Field; the infield does not overlap with the football/soccer field, although the outfield does. The baseball and softball outfields overlap with each other.

During the 2018-2019 school year, many of the School's athletics programs practiced and competed at the School.¹ At the time of OCR's site visit, the athletic department included the following sports teams: boys' and girls' cross country; girls' volleyball; football; boys' and girls' soccer; boys' and girls' swimming; boys' and girls' basketball; boys' and girls' wrestling; boys' baseball; girls' softball; boys' and girls' golf; and boys' and girls' track and field.

OCR investigated the girls' and boys' athletics programs, specifically examining the features, quality, maintenance and preparation of, and availability of the different athletics facilities and whether the provision of the locker room, practice, and competitive facilities provided were equivalent for members of both sexes. The facilities included the following: the School's: main gym; auxiliary gym; track and field; North 40 Field; wrestling room; weight room; and boys' and girls' locker rooms; Broadway Middle School's: main gym; auxiliary gym; and boys' and girls' locker rooms; and, Broadway Field; Wahanna Field; Sunset Pool; Gerhardt Golf Course; and Astoria Country Club.

With respect to each of the School's athletics programs as described below, excluding softball and baseball, OCR's investigation revealed equivalent use and access to locker rooms, practice, and competitive athletic facilities for the girls' and boys' programs at the School.

Baseball Program

Baseball was a Spring sport. All baseball athletes used the baseball field at Broadway Field, which was located approximately one mile away from the School, for practice and competition. According to the District, Broadway Field was owned, operated, and maintained by the local park and recreation district and was used by other local city and club sports teams. The baseball field was a turf surface field, featured permanent fencing around the entire field, and according to the baseball coach, met the minimum regulation size for competitive events. The field surface was smooth, even, and consisted entirely of turf; the infield contained only field markings pertinent to baseball whereas the outfield contained field markings for football, soccer, and softball. The baseball field also featured a mesh backstop, electronic scoreboard exclusive to baseball, a partially fenced-in covered home dugout with a medium storage closet, a partially fenced-in covered visitor dugout, permanent foul poles, a permanent pitching mound, home and visitor bullpens, on-deck circles for home and visitor teams, a pitching/hitting cage, two storage containers, and one concession stand/press box with a public announcement (PA) system. The baseball field contained enough lighting to hold nighttime competition games and practices. The baseball field's metal bleachers were located behind the backstop on the home and visitor sides, were sturdy, and had seating capacity for about 60 spectators each. Neither the baseball coach nor the baseball athletes reported any problems viewing the field from the bleachers. There was a public restroom located approximately 300 feet away from home plate. OCR identified no safety hazards on the baseball field nor did witnesses report any.

¹ The School recently relocated to the new site. In Spring 2021, the School offered Spring athletics and hybrid (virtual and in-person) learning.

The baseball coach noted that the backstop netting needed work and that members of the public discarded food in the dugout. Baseball athletes reported having performed necessary maintenance on the backstop netting and pitching mound, and that they placed the bases to prepare the field for practice and competition. According to the baseball coach, most baseball games and practices were held at Broadway Field and the varsity and JV baseball teams practiced together. The baseball coach also told OCR that both baseball and softball teams regularly used their respective fields at Broadway Field simultaneously. According to the baseball coach, when both the softball and baseball teams were using Broadway Field, the baseball team stationed an extra player in right field to prevent stray baseballs from entering the softball field. Baseball athletes reported that they were able to use the entire baseball field to practice on during softball games.

In addition to Broadway Field, the boys' JV baseball team used the North 40 Field, a grass field located at the School. The field surface was uneven during OCR's site visit and OCR noticed a large amount of animal waste on the field. The baseball coach and baseball athletes rated the North 40 Field's overall condition as poor.

Softball Program

Softball was also a Spring sport. Both the varsity and JV softball teams used the softball field at Broadway Field. The varsity and JV softball athletes stated that the softball and baseball teams would regularly use the fields at Broadway Field simultaneously. The softball field was a turf surface field, with a temporary outfield fence, and according to the softball coach, the softball field met the minimum regulation size to hold competitive events. The field was green turf, had a clean and even surface; both infield and outfield contained the line markings for softball, football, and soccer, and the infield markings, according to the softball athletes, confused and distracted home and visiting softball athletes. The softball field featured a padded chain-link backstop,² an electronic scoreboard that was converted from football/soccer use in the fall to softball use in the spring, one partially covered dugout each for the home team and the visitor team with storage in the home dugout, temporary foul poles, two bullpens, on-deck circles for home and visitor teams, one hitting/pitching cage, space for concessions, and a small press box with a PA system. Broadway Field had lights around its perimeter and the lighting was sufficient for use during nighttime softball competitions and practices. There were home and visitor spectator bleachers that sat approximately thirty spectators each. The softball athletes and the softball coach reported that spectators could not see the whole softball field from the bleachers. There was one portable toilet located just behind home plate of the softball field and one public restroom located approximately 400 feet from home plate; the most direct route to the public restroom from home plate was through center field.

Softball athletes indicated that pitchers would get their foot caught in a hole in the pitching circle and that athletes had to avoid a hole, used for the football goal post, located on the third base

² The softball athletes reported to OCR that softballs would become stuck underneath the backstop, allowing opposing runners to advance during games.

line to avoid injury. In addition, the infield did not have a softball pitching circle permanently marked, and according to the softball athletes and softball coach, they were responsible for spray painting the pitching circle. According to the softball athletes and softball coach, they set up and broke down the temporary outfield fence for practice and competition, which would frequently fall over during competitions.³ Also, the softball coach and softball athletes reported having to roll temporary, heavy foul poles out, and described the wheels not working well. Softball athletes reported that while the baseball teams practiced during softball games, the softball teams were prohibited from practicing during baseball games.

In addition to Broadway Field, the JV softball team used Wahanna Field, a completely fenced-in grass/dirt surface softball field. The field was located approximately 1.5 miles from the School, and was owned, operated, and maintained by the District. According to the softball athletes and softball coach, Wahanna Field was sparingly used by the JV softball team because of the facility's poor condition. The infield dirt was hard and uneven, with no markings for a pitching mound, foul lines, batter's box, or other markings of any kind, and the grass outfield was muddy and uneven.

Other Programs

Many of the School's athletics teams used the same facilities for practice and competition. Cross country athletes primarily ran on various trails and routes throughout the community, track and field athletes practiced and competed on the School's track and field, and the swimming athletes used Sunset Pool. The cross country, swimming, and track and field boys' and girls' teams had the same coaches and practiced and competed together. Both boys' and girls' golf teams practiced at the same golf courses (Gerhardt Golf Course and Astoria Country Club) on the same days, at approximately the same time, and hosted their home competitions there. The girls' and boys' basketball teams used the School's main and auxiliary gyms for practice. Girls practiced earlier in the afternoon one week while the boys practiced in the evening, and then they switched the following week, alternating every other week throughout the season. Competitions were held at the School as well as at Broadway Middle School because each program had a varsity, a JV, and a second JV team, and an extra gym was needed when all six teams competed on the same day. Competition times, and accordingly competition locations, were scheduled similar to the practice times, alternating between the girls' team and the boys' team.

The football team practiced both at Broadway Field, as well as on the School's main field, and competed at Broadway Field. Both boys' and girls' soccer teams also practiced at Broadway Field as well as on the School's North 40 Field. As described above, Broadway Field was lined for football as well as soccer and was in excellent condition, whereas the North 40 Field was uneven. According to documentation provided by the District, the girls' soccer team practiced the most at Broadway Field; the football team practiced there a similar number of times; and the boys' soccer team practiced there fewer times. However, the girls' reported being moved depending on the football and boys' soccer schedules and the boys' reported only using the North 40 Field

³ Baseball athletes reported helping set up and take down the temporary outfield fence used by the softball team.

when they had an upcoming competition that would be on a grass field. In addition, the girls' volleyball team used the School's main and auxiliary gyms for practice and competition, no other team used the gyms during the volleyball season, and OCR's review of the gyms revealed that they were adequate and met regulations to host competitions. Finally, the wrestling team used the School's wrestling room for practice which was in average condition (no other team used the wrestling room during the season) and held competitions in the School's main gym which complied with competition regulations.

Locker Rooms

No team had exclusive use of the locker rooms at the School. In addition, the boys' and girls' locker rooms were not identical, for example, the boys' locker room had more lockers than the girls' locker room. However, both had running water, working toilets, and sinks. Furthermore, according to architectural plans of the building at the School's new site, the boys' and girls' locker rooms will be identical.

Analysis

OCR identified compliance concerns with respect to the quality and availability of the facilities used by the baseball and softball programs. OCR found disparities between the softball and baseball fields at Broadway Field. First, with respect to the softball field, in addition to having field markings for softball, the infield contained field markings for soccer and football that distracted softball athletes during competition, whereas the baseball field contained no infield markings other than for baseball. Additionally, it was the responsibility of the softball team to mark the pitching circle whereas the baseball team was not responsible for marking any lines on the baseball field. Second, softball athletes reported safety hazards (a hole near the pitching mound and a hole on the third base line) whereas there were no identified safety hazards on the baseball field. Third, there was limited spectator seating and a partially obstructed view from the bleachers at the softball field, while OCR received no information indicating an obstructed view from the baseball bleachers. Fourth, softball athletes reportedly had to set up and take down a temporary outfield fence that would repeatedly fall during practice and competitions, as compared to the baseball field's permanent fence. Fifth, the softball players and softball coach had to install temporary foul poles themselves throughout the season, as there were no permanent foul poles on the softball field as compared to on the baseball field. Sixth, the baseball field's location on Broadway Field is much closer to the restrooms than the softball field's location is. Finally, witnesses reported that stray baseballs would enter the softball field during softball practices and games because the baseball team was permitted to practice during softball games, however the softball team was not permitted to practice during baseball games.

OCR did not identify compliance concerns with respect to the quality and availability of the facilities used by the remaining athletics programs, as OCR's investigation revealed the boys' and girls' athletics programs had equivalent use and access to the majority of the athletics facilities. Specifically, the cross country, swimming, golf, and track and field teams generally practiced and competed together in the same facilities, and the boys' and girls' basketball teams had equivalent

use of the three gymnasiums. In addition, the boys' and girls' soccer teams and the football team had relatively equivalent access to Broadway Field (particularly the girls' soccer team compared with the football team) as well as the North 40 Field when that field was preferred. Further, the volleyball and wrestling teams had exclusive use of their facilities during their season. Finally, with respect to the locker rooms at the School, while the boys' and girls' locker rooms slightly differed, the differences largely offset each other, and the new locker rooms are designed to be identical.

In conclusion, OCR is concerned that the disparities, as identified above, at the softball field located at Broadway Field as compared to the baseball field may result in the denial of equal opportunity to female athletes. Prior to OCR concluding its investigation of the complaint, the District expressed interest in resolving the complaint. OCR agreed that the complaint is appropriate to resolve prior to the conclusion of the investigation.

In order to address the issues alleged in the complaint, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement (Agreement) which is aligned with the complaint allegation and the information obtained by OCR during its investigation. Under the Agreement, the District will take actions to ensure equity between the baseball and softball facilities.

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.

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, 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 Shana Heller, Attorney, at Shana.Heller@ed.gov or Barry Jointer, Investigator, at Barry.Jointer@ed.gov.

Sincerely,

/s/

Kana Yang
Team Leader

Enclosure (1): Agreement

cc: Elliot Field, Counsel for the District