



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

October 18, 2013

Kathleen Beane, Superintendent
Colonial Beach Public Schools
16 N. Irving Avenue
Colonial Beach, VA 22443

RE: OCR Complaint No. 11-13-1190
Letter of Findings

Dear Superintendent Beane:

This letter is to inform you of our disposition of the above-referenced complaint, which was filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education, on April 25, 2013, against Colonial Beach Public Schools (the Division). The Complainant alleged that, during the 2012-2013 school year, the Division discriminated against high school female athletes at Colonial Beach High School (the School) by failing to provide them with locker rooms, practice, and competitive facilities, including those for softball teams, that were equivalent to those it provided to high school male athletes.

OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*,¹ and its implementing regulation, at 34 C.F.R. Part 106 (Title IX),² which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of sex in education programs or activities. OCR has jurisdiction over the Division pursuant to Title IX because the Division is a recipient of Federal financial assistance from the Department. Because the Complainant alleged discrimination under Title IX, we have jurisdiction over the allegation.

¹ See <http://www.usdoj.gov/crt/cor/coord/titleixstat.htm>

² See <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=8cf04f863ef465f11af355b19f734717&rgn=div5&view=text&node=34:1.2.1.1.5&idno=34>

Legal Basis for and Standards Applicable to this Complaint

In determining whether recipients are in compliance with Title IX with respect to athletics, OCR follows “Title IX of the Education Amendments of 1972; Policy Interpretation: Title IX and Intercollegiate Athletics” (the Policy Interpretation), which was published at 44 Federal Register No. 239, Dec.11, 1979,³ and the “Title IX Athletics Investigator’s Manual” (1990) (the Manual).⁴ We note that a school division is required to ensure that its athletics program, *as a whole*, provides equitable opportunities to both boys and girls. This means that we do not analyze Title IX compliance on a sport-by-sport basis. Rather, we look at issues division-wide to determine whether boys’ and girls’ athletics opportunities are equitable.⁵ When disparities between boys’ and girls’ athletics programs are noted, we first consider whether the differences are negligible. When disparities are not negligible (that is, significant), we determine whether they are the result of non-discriminatory factors. Finally, we determine whether any disparities result 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 athletics opportunity.

An additional result of looking at the Division’s athletics program as a whole is that, although the Complainant mentioned only particular aspects of the Division’s athletics facilities (alleged disparities between the softball and baseball fields in terms of lighting and “spectator accommodations”), we have analyzed compliance in terms of the larger set of factors appearing in our analysis, below, e.g., the quality of practice, competitive, and locker room facilities.

Overview

The subject of this investigation was the Division’s Colonial Beach High School (the School), which is the only high school in the Division (the same facility houses the Division’s only middle school). The Division offers nine teams at the School (five for boys and four for girls): three Fall sports (one for girls and two for boys), two Winter

³ See <http://www.ed.gov/about/offices/list/ocr/docs/t9interp.html>. We note that, although the Policy Interpretation is expressly directed to intercollegiate athletics, “[t]he general principles of the Policy Interpretation also apply to interscholastic athletics.” See the Policy Interpretation, Section III: Scope of Application.

⁴ See <http://www.starnewsonline.com/assets/pdf/WM1131244.PDF>.

⁵ Nevertheless, we note that disparities in one sport can be the basis for a violation finding, e.g., if those disparities are substantial and there are insufficient (or no) disparities in favor of the other gender in other sports that counter-balance those disparities.

sports (one each for girls and boys), and four Spring sports (two each for girls and boys).⁶ See Table 1, below.

Table 1 Division Sports/Teams, by Season

FALL	WINTER	SPRING
Boys' V Football	Boys' V Basketball	Boys' V Baseball
Boys' JV Football	Girls' V Basketball	Boys' JV Baseball
Girls' V Volleyball		Girls' V Softball
		Girls' JV Softball

We received the Division's responses to our June 18, 2013, notification and data request letter (DRL) on July 15, 2013, and conducted an on-site review on July 24, 2013. During the onsite review, we interviewed you, the Division Athletics Director, and the School Principal and PE teacher. We also inspected the facilities utilized by all of the Division's teams.

Findings and Conclusions

In making our findings concerning this complaint, we evaluated information: provided by the Complainant and the Division in submissions and during telephone interviews with OCR staff; appearing on the Division's website; and obtained during the on-site visit.

Our determinations are also based on the additional information we obtained during our interviews and the onsite review of the School's athletics facilities.

In determining whether a recipient is in compliance with Title IX with respect to the provisions of locker rooms, practice, and competitive facilities, the Policy Interpretation provides that OCR looks to: (a) the quality, availability and exclusivity of use of the facilities provided for practice and competitive events; (b) the quality and availability of locker rooms; and (c) the maintenance and preparation of practice and competitive facilities.

⁶ Cheerleading is considered a sport in Title IX athletics investigations in only certain limited circumstances, which were not evident in the Division's cheerleading program. Therefore, cheerleading was not included in this analysis.

(a) *The quality, availability, and exclusivity of use of the facilities provided for practice and competitive events.*

The boys' basketball team, girls' basketball team, and girls' volleyball team all use the same facility – the gym -- for practices and competitions. Consequently, we have not evaluated the quality of the gym (although we did look at the availability and exclusivity of use of the gym, and found no disparities). Additionally, because there is no girls' team (e.g., lacrosse) with facilities to compare to the football team's facilities, we have not evaluated the football field (except to the limited extent it affects the baseball-softball facility comparison). The following discussion is therefore limited to a comparison of the quality of – and the availability and exclusivity of use of facilities for – the two School teams that do not share the same practice and/or competitive facilities, i.e., the baseball and softball teams.

We compared the quality of the baseball and softball fields in terms of the following elements: age, lighting, scoreboards, restrooms, seating/bleachers, concession stands, water fountains, public address systems, press boxes, dugouts, fencing, backstops, storage, bullpens, proximity to the school, foul poles, dimensions, irrigation, drainage, turf, the materials used in the infields and warning tracks (e.g., clay, sand, brick dust), field surface uniformity (including the borders between the infields and outfields, and the outfields and warning tracks), the materials used in and condition of the paint on some of these items, and the overall condition of the facilities. Although there were various insignificant disparities regarding some features,⁷ we found significant disparities with respect to the following features.

1. Lighting. The baseball field has lighting, although it is of poor quality. The softball field does not have lighting. Over the past three years, umpires have had to discontinue 5-6 softball games at the beginning of the (Spring) season due to darkness.
2. Irrigation. The baseball field has an irrigation system that was installed two years ago. The softball field does not have an irrigation system.
3. Press box. The baseball field has a small, two-story structure that includes a press box. The softball field does not have a press box.
4. PA System. The baseball field has two speakers that are attached to the two front corners of the press box. The softball field does not have a PA system.
5. Restrooms. There are restrooms adjacent to the football field that are 10-20 yards beyond the right field fence of the baseball field. From the outside,

⁷ For example, the baseball teams have four storage units, and the softball teams have just two, and the softball teams appear to have fencing, a backstop, bleachers, and bullpen netting that look 2-4 years newer than what the baseball teams have.

they look to be in fair condition. The softball field does not have restrooms. However, the Division has documented the fact that it has had contracts for the provision of portable restrooms next to the softball field during the past two softball seasons.

6. Practice fields. The softball teams have no practice fields, so the varsity, junior varsity, and middle school teams all share the game field for practices and games. The baseball team has two practice fields (three including the off-campus middle school field that the middle school baseball team sometimes uses), one of which is just beyond the left field of the baseball game field and the other of which is on the other side of the football field.

We note that, although both teams have exclusive use of their fields during their (Spring) season, the football team uses (as its end zone) part of the baseball outfield field during its (Fall) season. At the end of each football season, the Division takes steps to eliminate any damage to the baseball outfield prior to the (Spring) baseball season.

(b) The quality and availability of locker rooms.

We reviewed the quality of locker rooms in terms of the following elements: age (original construction and renovations); dimensions; materials used in and the finish of items in the locker rooms; the number of stalls/urinals, showers (and whether they are enclosed), and lockers; and the overall condition of the locker rooms. We also reviewed the availability of locker rooms, during each team's respective season, in terms of the number of teams/activities sharing locker rooms, the times at and durations for which the locker rooms are available for use, which team/activity has priority of use of shared facilities, and the proximity of the locker rooms to the locations of practices and competitions. We found that the quality and availability of locker rooms for boys' and girls' teams were equivalent, e.g., they were the same age (22 years old) and in the same (poor) condition, had roughly equivalent numbers of lockers and bathroom stalls, and were shared to an equivalent extent with PE classes and visiting teams.

(c) The maintenance and preparation of practice and competitive facilities.

The gym and locker room maintenance is performed by Division custodial staff. The baseball and softball fields are maintained and prepared by the respective coaches, and the softball coach also maintains the football field (which, as discussed above, overlaps the baseball outfield to some extent). No visible disparities in the maintenance of the indoor or outdoor facilities were observed during the onsite.

Based on the evidence discussed above, we have concerns that disparities in the District's athletics program are resulting in the denial of equal athletic opportunities to female athletes.

The enclosed Resolution Agreement, which you signed on September 26, 2013, addresses OCR's concerns. Pursuant to the Agreement, the Division agreed to provide the softball teams with equal access to and use of the baseball practice fields, and with a competitive field that is equivalent to the one it provides to the baseball teams in terms of lighting, irrigation, a press box, a PA system, and restrooms. Based on the Agreement, we are closing this investigation effective the date of this letter. However, we will monitor the Division's implementation of the Agreement to ensure that it fully complies with it and thereby addresses the concerns identified above.

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.

This concludes OCR's investigation of the complaint, and should not be interpreted to address the Division's compliance with any other regulatory provisions or to include any issues other than those appearing in this letter.

We remind the Division that it is not permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

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

If you have any questions about this letter or the outcome of this complaint, please contact Alessandro Terenzoni at (202) 453-5921 or alessandro.terenzoni@ed.gov, or Peter Gelissen at (202) 453-5912 or peter.gelissen@ed.gov.

Sincerely,

/S/

Dale Rhines

Program Manager

District of Columbia Office

Office for Civil Rights