



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

July 12, 2021

Sent via email srfisher@clevelandcountyschools.org

Stephen Fisher, Ed.D
Superintendent
Cleveland County Schools
400 West Marion Street
Shelby, NC 28150

RE: OCR Complaint No. 11-17-1586
Resolution Letter

Dear Superintendent Fisher:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on September 14, 2017 against Cleveland County Schools (the District). The Complainant alleged that the District discriminates on the basis of sex. Specifically, the complaint alleged that the District discriminated against female athletes at Shelby High School (School) in: the provision of locker rooms, practice and competitive facilities; scheduling of games and practice time; the opportunity to receive coaching; the provision of equipment and supplies; the provision of medical and training services; and publicity.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 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 any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title IX.

During the investigation, OCR reviewed documents provided by the Complainant and the District and conducted internet research. OCR interviewed the Complainant, the School's XXXXXX, XXXXXXXXXXXXXXX, the XXXXXXXX, and the XXXXXXXX. OCR conducted a site visit on March 20-21, 2018, and met with softball players, baseball players and student trainers, and attended a softball game.¹

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on May 4, 2021. OCR determine that it is appropriate to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the recipient expresses an interest in resolving the

¹ The baseball game OCR was scheduled to visit was cancelled due to the weather.

allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.41(a), provides 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 district. The Title IX regulation, at 34 C.F.R. § 106.41(c), states that a district which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes.

In determining whether a district is in compliance with Title IX with respect to athletics, OCR follows “A Policy Interpretation: Title IX and Intercollegiate Athletics” (the Policy Interpretation), which was published at 44 Federal Register No. 239, December 11, 1979; the “Title IX Athletics Investigator’s Manual” (1990) (the Manual) (available at <http://eric.ed.gov/?id=ED400763>), and other applicable policy documents.

OCR examines the following factors when determining whether the District is in compliance with Title IX.² With respect to the provision of locker rooms, practice, and competitive facilities, OCR examines the following factors: quality and availability of the facilities provided for practice and competitive events; exclusivity of use of facilities provided for practice and competitive events; availability of locker rooms; quality of locker rooms; maintenance of practice and competitive facilities; and, preparation of facilities for practice and competitive events. With respect to the scheduling of games and practice times, OCR examines the following: number of competitive events per sport; number and length of practice opportunities; time of day competitive events are scheduled; time of day practice opportunities are scheduled; and, opportunities to engage in available pre-season and post-season competition. With respect to the opportunity to receive coaching, OCR examines the following: relative availability of full-time coaches; relative availability of part-time and assistant coaches; and, relative availability of graduate assistants. With respect to the provision and maintenance of equipment and supplies, OCR examines the following: quality; amount; suitability; maintenance and replacement; and, availability. With respect to the provision of medical and training facilities and services, OCR examines the following: availability of medical personnel and assistance; health, accident and injury insurance coverage; availability and quality of weight training facilities; availability and quality of conditioning facilities; and, availability and qualifications of athletic trainers. With respect to publicity, OCR examines the following: availability and quality of sports information personnel; access to other publicity resources for men’s and women’s programs; and, quantity and quality of publications and other promotional devices featuring male and female programs.

The Policy Interpretation clarifies that a district must provide equivalent treatment, services, and benefits regarding athletic program components. The overall equivalence standard allows a district to achieve their own program goals within the framework of providing equal athletic opportunities.

² The below factors are described in “Title IX and Intercollegiate Athletics,” 44 Federal Register No. 239, December 11, 1979 – available at <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.

To determine equivalency for male and female athletic programs, program components are assessed by comparing the following: availability, quality, kind of benefits, kind of opportunities, and kind of treatment.

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the district may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Compliance concerns will exist only if disparities are of a substantial and unjustified nature in a district's overall athletic program; or if disparities in individual program areas are substantial enough in and of themselves to deny equality of athletic opportunity.

Summary of the Evidence Gathered to Date³

A. The provision of Locker Rooms, Practice and Competitive Facilities

The Complainant alleged that the District discriminated against female athletes by not having a softball field located on the School's campus, but rather requiring players to practice and compete on the Middle School's softball field, as compared to the male athletes who practiced and completed on the baseball field located on the School's campus. The Complainant also alleged that the baseball batting facility was never made available to the softball team, despite the softball team's name being affixed to the batting facility. In addition, the Complainant alleged that the softball team was not allowed to use the concessions facility when softball and Middle School baseball competitions were held at the same time. Further, the Complainant made allegations regarding the maintenance of the softball field as compared to the baseball field. Finally, the Complainant alleged that the softball players did not have designated, District-provided transportation to the softball field for games and practices.

Baseball and Softball Facilities

The baseball team uses Veteran's Field/Keeter Stadium (baseball field), located at the School, for both practice and competition. The baseball field was originally constructed in 1975 and has been (since 2011) and will continue to be used as the site of the American Legion World Series (ALWS). The baseball field underwent a \$2.8 million upgrade in 2013 and the ALWS Committee funded additional improvements to the stadium in more recent years as well. The softball team uses the Shelby Middle School Softball Complex (the softball field), which was constructed in 2014, for both practice and competition. The softball field was used by the School's softball team during the spring season and by the Middle School softball team during the fall season. It is located next to the Middle School baseball field, which was also used during the spring season. The Middle School is located 1.2 miles away from the School and the softball field is located behind the Middle School building. According to witness interviews, softball players did not use the baseball facilities located at the School and baseball players did not use the softball facilities.

³ OCR considered information regarding all athletic teams at the School; however, the investigation focused primarily on allegations regarding the baseball (male) and softball (female) teams as they were the focus of the complaint. OCR reviewed information from the District covering the 2016-2017 and 2017-2018 school years.

OCR's site visit to the baseball and softball fields revealed that the baseball field had the appearance of a small professional stadium, due to the affiliation with the ALWS. Nevertheless, the softball facility was, in many ways, appropriate for high school softball use and largely met the needs of the players. OCR notes that the softball players reported to OCR that they believed their facilities were adequate while the XXXXXXXXX found the quality of the softball facilities to be some of the best in the local area due to their maintenance. Both fields had the following: covered dugouts with one row of seating; fencing around the fields; backstops; adequate bullpens for home and visiting teams; lighting reasonable based on field size; turf-lining for games; foul poles; electronic scoreboards; spectator seating on either side of the dugouts which accommodated the level of spectators; press boxes; public address systems; storage space; restrooms nearby for players, visitors and spectators; and, concessions, although the softball concessions had to be shared with the Middle School baseball team when games were played concurrently. The baseball field had ample parking nearby, a ticket office building, and a well maintained and uniform field surface. The softball field had some parking nearby and more within walking distance, a chair and desk set up to sell tickets, and a field surface that appeared patchy or inconsistent in some areas. Both fields struggled with field drainage issues. OCR noted, additionally, that while the baseball dugouts had hooks and cubbies for helmets and other items, the softball dugouts did not have similar hooks and cubbies. In addition, while the baseball foul poles were marked with distance, there were not similar distance markers on the softball field foul poles.

Adjacent to the baseball field was a batting facility, which included batting cages with two lanes and a pitching machine.⁴ It was covered with a roof and had AstroTurf or green carpeting covering the cement floor. Baseball players reported using the batting facility frequently, and during inclement weather they used the batting cages, the parking lot, or the School's gym, which would have to be shared with other teams. XXXXXXXXXX explained that the XXXXXXXXXX could request to use the batting facility, and if so, they would split the time or let the softball team use it. XXXXXXXXXX confirmed that her team could request use of the batting facility, but that it would be an inefficient use of practice time to use it because the softball field and equipment were at the Middle School.

At the Middle School, between the softball and baseball fields, there were two batting cages, one for baseball and one for softball. The batting cages had one lane in each, cement floors (which could damage cleats), and while they were covered with a net, it was reported that the softball field's batting cage net was not sturdy. As a result, witnesses reported that the softball players infrequently used the softball batting cage and instead used the adjacent baseball batting cage with sturdier nets. Witnesses further reported that during inclement weather, the softball team used either or both of two Middle School gyms, one of which could be set up with a batting cage, and split usage of the gyms with the Middle School baseball team.⁵ At the time of OCR's site visit, there was no dedicated softball pitching machine, despite the XXXXXXXXXX making that request; the XXXXXXXXXX told OCR that it was not considered required equipment that would permit the use of District funds. In September 2020, the District informed OCR that two softball pitching machines had been acquired.

⁴ According to the District, the batting cage was added next to the baseball field in 2008 by the ALWS Committee and was shared between the baseball and softball teams.

⁵ The Softball Coach noted that the batting cage in the gym was barely long enough for pitching distance.

Locker Rooms

OCR learned that no team exclusively used a locker room facility year-round; instead, they were assigned to teams (and lockers to athletes) for the competitive season only, including the baseball and softball teams. The baseball team used separate locker rooms for varsity and junior varsity adjacent to the field, and in each locker room, the lockers were full length, with no doors, but with a cubby for shoes on the bottom, hooks in the middle section, and a cubby on the top. While the rooms had showering facilities that appeared usable, the shower areas were used for storage. The softball team used a locker room that was adjacent to its field, which included half-size lockers with doors. While there were enough lockers for the team, witnesses noted that only a few softball players left their equipment in the lockers overnight. Both baseball and softball players reported their locker rooms as being of nice quality.

Maintenance and Preparation of Facilities

With respect to maintenance and preparation of facilities, it was the responsibility of each school's administration to oversee the maintenance and preparation of athletic facilities, with some coaches more involved in maintenance than others. Witnesses reported that baseball coaches mowed, maintained, and prepared the baseball field during the season, including lining the field. The Baseball Coach reported that a volunteer helped as well, and at times, the ALWS Committee would send someone to the baseball field to conduct maintenance or improvements, which could occur during the School's baseball season. During the 2017-2018 school year, witnesses reported that the Middle School Athletic Director maintained the softball field, including mowing, dragging, lining, and removing water from the field with sump pumps, and XXXXXXXXXXXX and the local parks and recreation organization assisted as well. District custodial staff cleaned the locker rooms, press box, stadium, and concessions.

Softball Transportation

To get to the softball field, players reported that they often had their parents or grandparents transport them from the School, drove themselves if they had a car and driver's license and took other softball players, or took the school bus that stopped at the Middle School. XXXXXXXXXXXX explained that, on occasional inclement weather days, a dedicated shuttle bus took softball players to the field. Due to traffic congestion in and out of the School, players reported that some of the parents/grandparents arrived at the School two hours before dismissal in order to be at the front of the "pick up line" at the School so that the players were not delivered late to practice. It was reported that student drivers faced congestion leaving the School's parking lot as well.⁶ Further, witnesses informed OCR that the school bus was not dedicated to softball players (it was instead assigned to a school bus route closest to the middle school), and softball players rarely took it due to it often being too full and not having enough space for their equipment. Witnesses further noted that they would still need to walk about .3 miles with their equipment from the bus drop-off point to the softball field. In addition, if a student had to stay late at the School for any reason, she may miss practice due to lack of transportation to the softball field.

⁶ In addition, in order to get to the Middle School, drivers needed to make a difficult and dangerous (i.e., mostly "blind") left turn out of the School's parking lot.

B. Scheduling of Games and Practice Time

With respect to the scheduling of games and practice times, the Complainant alleged that the School’s softball team did not have off-season workouts as compared to the baseball team and noted that there were times when a softball game and a Middle School baseball game occurred at the same time.

Through the investigation, OCR learned that individual coaches were expected to schedule their own practice times and off-season workouts and determine the length of practice, within the parameters set by the North Carolina High School Athletic Association.⁷ XXXXXXXX XXXXXXXX started practice at 3:45 p.m., which was later than other School teams, because of the time it took for players to get to the softball field. XXXXXXXX ended practice at 5:30 p.m. XXXXXXXX did not want XXXXXXXX practice to end too late, taking into consideration homework and other responsibilities students may have. XXXXXXXXXXXX, on the other hand, typically held practices from 3:20 p.m. to 5:30 or 6:00 p.m. With respect to off-season workouts, the XXXXXXXX held pre-season workouts twice a week (90 minutes each), with only 4-5 players in attendance due to transportation limitations. XXXXXXXXXXXX reported holding pre-season workouts in the Spring, four days a week prior to the start of the baseball season. Lastly, with respect to the number of competitive events per sport and the time of day competitive events were scheduled, the Complainant did not raise, nor could OCR otherwise find, any concerns.

C. The Opportunity to Receive Coaching

With regard to coaching, the Complainant alleged that the School’s softball team needed their own coach who could dedicate his/her time to the high school softball team (and not split duties with the Middle School team), believed that the Softball Coach’s priority was the Middle School softball team, and noted that the baseball team had several coaches who did not coach any other teams.

Through the investigation, OCR learned that the District’s preference was to hire coaches who were also teachers at the particular school so that the coach could have regular contact with their student athletes, and that at the School, coaches were encouraged to both coach multiple sports. In addition, the District noted that XXXXXXXXXXXX was hired as a XXXXXXXXXXXX .⁸ In addition, for the baseball team, there was a head varsity coach, head junior varsity coach, varsity assistant coach, and junior varsity assistant coach, and three of the coaches coached other sports during different seasons. For the softball team, there was a head coach and two assistant coaches; the head coach coached two other sports during different seasons.

D. The Provision of Equipment and Supplies

With respect to the provision of equipment and supplies, the Complainant alleged that the District provided softball uniforms only once during the prior 15 years, as opposed to providing the

⁷ Athletes were not required to attend off-season workouts to ensure that students could play on various teams throughout the school year.

⁸ At the time of OCR’s site visit and interview, XXXXXXXXXXXXXXXX.

baseball team with uniforms annually, and that the former softball coach had purchased other uniforms for the players with money the team fundraised.

Through the investigation, OCR learned that each school’s athletic director determined the schedule for purchasing new uniforms, and on occasion, teams used fundraised or donated money to purchase uniforms. At the School, there was a six-year replacement schedule for equipment and uniforms, but the Athletic Director also ordered replacement items “as needed,” as equipment for some sports lasted longer than others. According to documentation provided by the District as well as interviews, both teams received new uniforms for the 2018 season (although the softball players received theirs at the end of the season) and for the 2017 season.⁹ Witnesses reported that the Baseball Coach provided the players with a practice shirt annually and that the team used fundraised money to acquire warmup jackets for the varsity team, whereas the softball players were not provided with either, with the exception of the 2018 season when the Softball Coach ordered t-shirts for players to wear during some games as they awaited the arrival of uniforms. Witnesses reported that baseball players typically received two hats each season (with the cost split between the School and XXXXXXXXXXXX) whereas the softball players had to purchase their own for the 2018 season, and the former softball coach provided them with hats in prior seasons. Players on both teams provided their own cleats, socks, gloves, and bats, and the coaches acquired bats as well.¹⁰

The District provided helmets and catching gear to both teams, although some baseball and softball catchers purchased their own gear, softball players reported needing more helmets, and the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The District also provided practice balls to both teams; the XXXXXXXXX reported that they were of mediocre quality and the XXXXXXXXXXXXXXXX purchasing balls with fundraised money. In September 2020, the District informed OCR that the following had been acquired for the softball team: new uniforms and belts, alternate game jerseys, and hats and visors; 2 sets of catching equipment and carrying bags; batting helmets; practice balls (both indoor and outdoor); weighted training balls; wiffle balls; coaching helmets and jackets; ear warmers; trophies; and, socks.¹¹ The District did not provide a similar update as to what items, if any, had been acquired for the baseball team.

E. The Provision of Medical and Training Services

With respect to the provision of medical and training services, the Complainant alleged that the baseball team had several student trainers who came to practices and games and provided water to the athletes, and in contrast, the softball team had one student trainer who did not attend practices, attended games sporadically, and did not provide water.

Through the investigation, OCR learned that there was one staff trainer who floated between various home games including visiting baseball and softball games. There were also student

⁹ Baseball received new uniforms for the 2013 season and softball received two sets for the 2014 season. In addition, the investigation revealed conflicting information with respect to what funds were used to pay for some of the uniforms.

¹⁰ While it was typically the players’ responsibility to purchase socks, XXXXXXXXXXXX reported acquiring socks for their players for the 2018 season.

¹¹ The District did not, generally, indicate what funds were used for each purchase.

trainers who were assigned to a team each season and were primarily responsible for providing water and ice to the teams, having a first aid kit available, and contacting the staff trainer in case of an injury. OCR received conflicting information regarding how many student trainers were assigned to the baseball team as compared to the softball team during the 2016-2017 school year and softball players recalled the student trainers infrequently attended practices and games. However, during the 2017-2018 school year, it was reported that there were comparable numbers of student trainers on both the baseball and softball teams, and witnesses recalled that typically, at least one student trainer attended practices and games for both baseball and softball. Lastly, with respect to health, accident and injury insurance coverage, the availability and quality of weight training facilities, and the availability and quality of conditioning facilities, the Complainant did not raise, nor could OCR otherwise find, any concerns.

F. Publicity

With respect to publicity, the Complainant alleged that the District discriminated against female athletes at the School because the School's 2017-2018 calendar, a 1-page poster which displayed images of student athletes on it, displayed more male athletes than female athletes and did not include a photo of a softball player.

Through the investigation, OCR learned that the calendar was an outsourced project created by the local newspaper, that District staff selected photos to provide to the newspaper and encouraged the newspaper to include as many sports as possible but that the newspaper selected which of the photos to include, and that the 2017-2018 calendar included 6 male athletes, two female athletes, one male non-athlete, and two female non-athletes on it. The softball players also told OCR that there were Twitter pages for the baseball and soccer teams but not for softball, and that there was a big signing day for football players who would be playing football in college, but not for softball.¹² OCR received conflicting information regarding whether there were posters around the school that omitted softball athletes and whether game and win announcements over the public address system were made less frequently for the softball team as compared to other sports. In addition, witnesses consistently explained that it was the responsibility of each coach to make publicity decisions, including providing game results to the School for announcement and to local media for news coverage.

Analysis

As the District requested to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, OCR did not conclude its investigation. However, based on the investigation thus far, OCR has initial, preliminary compliance concerns regarding the District's compliance with Title IX.

OCR identified compliance concerns with respect to access to facilities, scheduling of practices, and equipment. Specifically, the evidence to date fails to indicate that there was a consistent and dedicated method of transportation for softball players to get to their field, while the baseball players could walk to the baseball field from the School building within minutes. This led to a later start time for softball practices, overall shorter practices, and difficulty for softball players to

¹² OCR found evidence on the internet of "signing days" for softball players like those for football players.

access off-season workouts. In addition, while the baseball players had two lanes in their batting cage, with a sturdy roof, covered flooring, and one pitching machine, the softball players had only one lane in their batting cage, with unstable netting, cement flooring, and no pitching machine (at the time of OCR's site visit). Also, while the baseball field had a uniform, well maintained field, distance markers in the outfield, and dugouts with hooks and cubbies for helmets and bats, the softball field was not uniform and had none of these other elements. Furthermore, OCR identified compliance concerns with respect to the provision of equipment and supplies, for example, with respect to hats, practice balls, and uniforms.¹³ As noted above, prior to OCR completing the investigation, the District requested to resolve the complaint.

OCR did not identify compliance concerns with respect to the opportunity to receive coaching, the provision of medical and training facilities and services, and publicity. With respect to the opportunity to receive coaching, the baseball team had four coaches (for a varsity and junior varsity team) while the softball team had two or three coaches. In addition, although the Complainant raised concerns with XXXXXXXXXXXX coaching other sports in other seasons, the Baseball Coach also coached another sport, and this was encouraged by the District. With respect to the provision of medical and training facilities and services, while the Complainant and softball players raised concerns regarding the 2016-2017 school year, the staff trainer and student trainers attended practices and games and brought water for both the softball team and the baseball team during the 2017-2018 school year. Finally, with respect to publicity, while OCR notes that the calendar poster included more male students than female students, this is only one element of publicity, and both XXXXXXXXXXXX acknowledged their responsibility as coaches to provide information for announcements and to the local newspaper. While OCR did not identify specific compliance concerns with respect to these program components, OCR notes that the creation of an equality of program benefits policy – one of the resolution agreement provisions – will encompass these program components.

Resolution and Conclusion

On July 2, 2021, the District signed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the District to provide transportation for softball players to the softball field such that players have comparable access to the softball field as baseball players have to the baseball field, so long as the softball field is located anywhere other than at the School; ensure comparability between the baseball and softball batting cages including the provision of pitching machines, install hooks and helmet cubbies in the softball field dugouts, add distance markers in the outfield of the softball field, and prepare and maintain the softball field surface in a manner appropriate for practice and competition; create an equality of program benefits policy; and, conduct an equipment and supplies benefits assessment and ensure the provision of any item that is not comparable between the male and female programs. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

¹³ OCR acknowledges that while the District provided OCR with an update of numerous items provided to the softball team after OCR's site visit, it did not similarly provide an update as to what had been provided to the baseball team.

This concludes OCR's investigation of the complaint. This letter 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. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact the OCR attorneys assigned to this complaint. You can contact Rashae Chambers at Rashae.Chambers@ed.gov or 202-453-7993, or Shana Heller at Shana.Heller@ed.gov or 415-386-5377.

Sincerely,

/s/

Kristi Harris

Team Leader, Team IV

District of Columbia Office

Office for Civil Rights

Enclosure