



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

April 28, 2017

Mr. Dan Goldman
Superintendent
Hood River County School District
1011 Eugene Street
Hood River, Oregon 97031

Re: Hood River County School District
OCR Reference No. 10161092

Dear Superintendent Goldman:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against the Hood River County School District (the district). As explained below, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

The complaint alleged that the district discriminates against females at XXXXXXXXXXXX, based on sex, by failing to provide them with equal athletic opportunities with respect to the following: provision of locker rooms, practice and competitive facilities; and modes of transportation. Specifically, the complaint cited disparities between the girls' softball facility and the boys' baseball facility. During the course of its investigation, OCR identified one additional area of concern, based on the data provided by the district and OCR's review of the data: whether the district discriminates against females at Hood River Valley High School, based on sex, by failing to provide them with equal athletic opportunities with respect to the scheduling of games and practice times.

OCR accepted this complaint for resolution under the authority of Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations. Title IX prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance. The district is a recipient of federal financial assistance from this Department; therefore, it is subject to Title IX.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.41, prohibits recipients from discriminating on the basis of sex in any interscholastic, club or intramural athletics offered by the recipient and requires that recipients provide equal athletic opportunity for members of both sexes. The legal standards applied by OCR with respect to the provision of locker rooms, practice and competitive facilities and modes of

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

transportation applied in this investigation are derived from the regulations, at 34 C.F.R. § 106.41, and are set forth below.¹

Issue No. 1-Facilities

OCR's 1979 Policy Interpretation lists six factors to be assessed in determining compliance with the requirements regarding facilities: (1) quality and availability of the facilities provided for practice and competitive events; (2) exclusivity of use of facilities provided for practice and competitive events; (3) availability of locker rooms; (4) quality of locker rooms; (5) maintenance of practice and competitive facilities; and (6) preparation of facilities for practice and competitive events. 34 C.F.R. § 106.41(7).

Issue No. 2-Scheduling of Games and Practice Times

OCR's 1979 Policy Interpretation lists five factors to be assessed in determining compliance with the requirements regarding scheduling, and the factors to be assessed by OCR in this program area under the 1979 Policy Interpretation are: (1) the number of competitive events per sport; (2) the number and length of practice opportunities; (3) the time of day competitive events are scheduled; (4) the time of day practice opportunities are scheduled; and (5) the opportunities to engage in available pre-season and post-season competition. 34 C.F.R. § 106.41(c)(3).

Investigation to Date

Issue No. 1-Facilities

The focus of OCR's investigation was whether the district provides equal athletic opportunities to male and female athletes with regard to facilities, including the provision of locker rooms. This inquiry included an investigation into the quality of the facilities, whether facilities were located on or off-campus, and whether the district took steps to mitigate any inequities that may have been caused by off-campus locations, such as transportation to practice and events.

Each of the three softball squads, varsity, JV and JV2 practice and compete at XXXXXX, which is one mile from the high school. The complainant's position is that the facilities at the elementary school are inequitable as compared with the baseball field. Specifically, the complainant indicated that the baseball field is in much better condition than the softball field, that the bleachers at the softball field are in a hazardous condition with split seats and many loose boards. She also alleges that unlike the baseball fields, there is no announcer's box, concession stand or sound system and that no locker rooms are available in proximity to the field. The complainant's position is also that the softball field has only a net backstop as compared with a more substantial fenced backstop at the baseball field, does not have lighting and that the only upgrade at the softball field was the installation of a new scoreboard in 2012. Finally, her position is that the softball field does not have an enclosed hitting facility located at their fields, while the boys' baseball teams use a batting cage facility (Lions' Facility), which is located on the high school campus in proximity to their fields.

¹ The specific complaint allegation was that the "softball field is not on campus so students have to transport themselves to practice, often loading five to six girls per car." Modes of transportation is one of the factors to be assessed in OCR's 1979 Policy Interpretation in determining compliance with 34 C.F.R. § 106.41(4), Travel and Per Diem. OCR determined that the transportation issue raised by the complaint allegation is more accurately assessed under factors 1 and 3 listed under facilities, 34 C.F.R. § 106.41(7).

The district's data reflects that boys' baseball teams use Trainer Field (Ballparks 1 and 2) that is located on the high school campus. The team also uses Collins Field, a community baseball field located at 1305 May Street, which is 2.4 miles from the high school.

The district provided data reflecting that most boys' and girls' teams practice and compete at facilities that are located on the campus of XXXXXX and that some teams compete off-campus at facilities that are located between approximately 1/2-mile to 2-1/2 miles from the high school.²

Supplemental data and clarifying information provided at OCR's request regarding the location and practice schedules for boys' and girls' swimming, water polo, and lacrosse and tennis are either joint practices at the same or adjacent facilities or that the teams, except tennis, alternate start times.

With regard to the location of the girls' softball facility, the complaint alleges that the girls' are negatively impacted by their off-campus location and that the school has not sought to mitigate this impact by providing transportation to practices and home games. The complainant provided information that the softball players do not receive bus transportation for practices and that students have to transport themselves to practice, often loading five to six girls per car.

The investigation thus far indicates that the district has a transportation policy that has no specific provisions that relate to athletics or transporting athletes to off-campus facilities except for a provision that states: "School transportation services may be provided for other school-sponsored activities." The district's transportation policy also provides that the transportation of students will be by the district's transportation system or by a district employee's automobile, properly insured, except where a school administrator has approved a parent or employee to transport, the student's parent or guardian has signed a permission slip, the driver is properly licensed and insured, and the vehicle has a sufficient number of seat restraints. According to the district's transportation policy, a student may also be authorized to use a personal vehicle with proper authorization.

The district provided OCR with data about bus transportation to practices for school athletic teams. The district's information indicates that it provided bus transportation to Westside Elementary School for all off-campus practices for boys' and girls' soccer and lacrosse and to other off-site practices for tennis and skiing (alpine, freestyle and snowboard). The data also showed the district had not provided bus transportation for boys' and girls' golf or Nordic skiing.

The district also provided OCR with data about bus transportation to home and away competitions for school athletic teams. For home competitions, the district stated that "[a]ll teams are expected to use privately-owned vehicles to arrive at home events whether they are on-site or off-site." For some sports that are combined boys and girls squads (track, ski, swim, cross country and water polo), the district's information reflects that it provided bus transportation for away competitions for boys and girls together. The district's information regarding school district activity bus requests reflects that the district provided bus transportation for away games for the following boys' and girls' teams during the 2015-2016 school year (through March 1, 2016)³: boys' basketball (15), girls' basketball (10), boys' wrestling (19), girls' wrestling (6), cheer (9), football (5), boys' soccer (8), girls' soccer (8) and girls' volleyball (9).

² Practice and competition for Alpine skiing, freestyle and snowboarding are at a ski area that is 35 miles from the high school.

³ The total number of events is in parenthesis.

The district provided additional narrative information regarding the use of district buses and vans for practices and competitions and stated that for practices “[o]ff-site teams are provided with [district] bus transportation for practices,” including the following boys’ and girls’ teams: soccer, swim, skiing (alpine/freestyle/snowboard), lacrosse, tennis and golf. The district also represented that it provided bus transportation for practices for girls’ softball.

The complainant’s position is that she is familiar with the girls’ softball program from having been a previous participant and from her regular communication with several recent and current participants and that the school has not provided transportation to or from practices and home games for the softball team

Issue No. 2 - Scheduling of Games and Practice Times

During the course of OCR’s review of the data provided by the district, OCR identified potential compliance concerns with respect to whether the district provides equal athletic opportunities to male and female athletes with regard to the scheduling of games and practice times. These concerns were not included in the complaint allegations that were accepted for resolution but are based on OCR’s review of the data. The data reflects that there were significantly more transportation requests for away contests for boys’ basketball and boys’ wrestling versus girls’ basketball and wrestling and a “Boot Camp” for boys’ basketball during the week before tryouts (November 10-13, 2015) with no indication of a similar event for girls. The information also reflects that the use of batting cages by boys’ baseball is always scheduled before the use of the facility by girls’ softball.

Provisions of the Voluntary Resolution Agreement

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve it with an agreement during the course of an investigation. Before OCR completed its investigation of whether the district failed to provide female student athletes with equal athletic opportunities in the provision of locker rooms, practice and competitive facilities, including transportation to off-campus facilities, and scheduling of games and practice times, the district expressed an interest in voluntarily resolving this case. In light of the district’s willingness to address the concerns comprehensively without further investigation, OCR determined entering into an agreement was appropriate.

The agreement requires the district to conduct an assessment of its locker rooms, practice and competitive facilities to ensure that it provides equitable benefits, treatment, services, and opportunities with respect to athletic facilities to both male and female athletes. This assessment will include all locker rooms, practice, and competitive facilities used by all XXXXX female and male interscholastic athletic teams and will include, but not be limited to the six factors enumerated in the Policy Interpretation referred to on page 2, above.

Additional specific areas that the district has agreed to assess under the agreement are:

- any differences with respect to quality, availability, etc., between the baseball fields and the softball fields;

- the impact on girls' softball having a facility that is located off-campus;
- the use of the batting cage facility (called the Lions' Facility), which is located at the high school adjacent to the baseball field; and
- the availability of boys' baseball and girls' softball locker rooms.

With regard to transportation to off-campus facilities, the agreement requires the district to include in the above assessment a review of the availability and mode of transportation provided to boys' and girls' teams from the high school to all off-campus practice and off-campus home competition sites, and all away competitions and will specifically include a review of whether the district provides transportation for girls' softball to and from the team's off-site practice facilities.

Regarding the scheduling of competition and practice schedules, the agreement requires the district to conduct an assessment to ensure that it provides equitable benefits, treatment, services and opportunities with respect to the scheduling of competition and practices and will include, but not be limited to, the five factors enumerated in the Policy Interpretation referred to on page 2, above. This assessment will also include specific issues that are contained in the agreement based on OCR's review of data provided by the district to OCR relating to: (1) a higher number of transportation requests for away contests for boys' basketball and boys' wrestling than for girls' and whether boys' basketball or other boys' teams have more opportunities for competition and, if so the reasons; (2) information regarding a boot camp that was provided for boys' basketball during the week before tryouts (November 10-13, 2015), whether similar programs are provided for boys and girls in other sports; and (3) the specific schedule for use of the batting cages located near the XXXXXX for boys' baseball and girls' softball, including an explanation for how the schedule is determined.

These assessments will be made based on information obtained from a variety of sources, including the coaches of each team, student athletes, and other knowledgeable individuals. The assessments will be submitted to OCR for review and approval and once OCR approves of the assessments, the district will develop an action plan based on the assessment that addresses any policies, practices or procedures that resulted or may have resulted in unequal benefits, treatment, services or opportunities for female or male athletes. Following OCR's approval of the assessments and the approval of the resulting action plans, the district will implement the plan within the time period set forth in the agreement following OCR's approval.

The agreement contains specific time frames within which the district will complete its assessments, formulate an action plan and complete the implementation of the action plan. Finally, the agreement contains provisions for OCR to monitor the agreement that authorize OCR to obtain data and other information in a timely manner, visit the district, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the district has fulfilled the terms of this agreement and is in compliance with the regulation implementing Title IX.

OCR will not close the monitoring of the agreement until OCR determines that the district has fulfilled the terms of this agreement and is in compliance with the Title IX regulations at issue in this case and OCR may, with proper notice, initiate administrative enforcement or judicial proceedings, including the enforcement of specific terms and obligations of this agreement.

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. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant 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.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by August 31, 2017.

Thank you for the cooperation that you, your staff and the district's legal counsel extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Timothy L. Sell, Senior Attorney, by telephone at (206) 607-1639, or by e-mail at timothy.sell@ed.gov.

Sincerely,

Kelli Lydon Medak
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Honorable Salam Noor, Deputy Superintendent of Public Instruction