



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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Dr. Rob Brown
Superintendent
Jeff Davis County Schools
P.O Box 1780
44 Charles Rogers Blvd.
Hazlehurst, GA 31539

RE: Complaint #04-14-1550

Dear Dr. Brown:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on April 25, 2014, against Jeff Davis County Schools (District). The Complainant alleged discrimination on the basis of sex at Jeff Davis Middle and High Schools and on the basis of disability at Jeff Davis High School.

Specifically, the Complainant alleged that the District has done the following:

1. Failed to fully meet the interest and abilities of female athletes at the Middle School;
2. Failed to provide permanent seating for the softball field at the High School; and
3. Failed to provide an accessible route to the softball spectator area at the High School.

OCR investigated the complaint pursuant to:

1. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance;
2. Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance; and
3. Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

The District receives Federal financial assistance and is a public entity. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following legal issues:

1. Whether the District discriminated against female students at the Middle School on the basis of sex by failing to provide them with equal athletic opportunities by failing to effectively accommodate their interests and abilities, in noncompliance with Title IX and its implementing regulation at 34 C.F.R. §106.41(C)(1).
2. Whether the District discriminated against female students at the High School on the basis of sex by failing to provide them with comparable competitive facilities vis-à-vis permanent bleachers at the softball field in noncompliance with Title IX and its implementing regulation at 34 C.F.R. § 104.61(C)(7).
3. Whether the District discriminated against persons with disabilities by not providing an accessible route to the softball field spectator area in noncompliance with the Section 504 implementation regulation at 34 C.F.R. § 104.21.

Legal Standards:

The Title IX regulations, at 34 C.F.R. §106.41(a), 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 athletics offered by a district, and no district shall provide any such athletics separately on such basis. Section 106.41(c) requires districts to provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the regulations provide that OCR will consider, among other factors, whether the selection of sports and levels of competition effectively accommodate the interests and abilities of students of both sexes (34 C.F.R. §106.41(c)(1)).

Another factor that OCR evaluates in determining whether equal opportunities are available to members of both sexes is the provision of locker rooms, practice and competitive facilities. 34 C.F.R. § 104.61(c)(7).

The Section 504 regulations, at 34 C.F.R. § 104.21 provides that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination. The regulation implementing Title II is interpreted consistent with the regulation implementing Section 504.

Factual Findings

Issue #1 – Interests and abilities

As a means of assessing compliance under the regulations, OCR follows the Policy Interpretation issued by the Department on December 11, 1979, 44 Fed. Reg. 71413, et seq. (1979). The 1979 Policy Interpretation states that, to effectively accommodate the interests and abilities of male

and female athletes, districts must provide the opportunity for individuals of each sex to participate in interscholastic competition, and for athletes of each sex to have competitive team schedules that equally reflect their abilities.

The 1979 Policy Interpretation permits three alternate ways of assessing whether districts are providing nondiscriminatory opportunities to participate in interscholastic athletics, commonly referred to as the “three-part test.” The three-part test is intended to allow districts to maintain flexibility and control over their athletic programs.

OCR assesses whether an institution is providing nondiscriminatory athletic participation opportunities for individuals of both sexes by determining:

1. Whether participation opportunities for male and females students are provided in numbers substantially proportionate to their respective enrollments; or
2. Whether the members of one sex have been and are underrepresented among interscholastic athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Whether the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

Elements of Proof

Establishing the following three prongs will constitute a violation of Title IX:

1. Participation opportunities for female athletes are not substantially proportionate with enrollment.
2. The district has no history and continuing practice of program expansion responsive to the developing interests and abilities of female students.
3. The district cannot demonstrate that the interests and abilities of its female athletes are being fully and effectively accommodated by the current program.

Part One Analysis

Under Part One of the three-part test, OCR will find that a school is providing nondiscriminatory participation opportunities for individuals of both sexes if the school provides athletic participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments.

OCR's analysis begins with a determination of the number of participation opportunities afforded to male and female athletes in the school. Participants are defined as those athletes who are receiving the school-sponsored support normally provided to athletes at the school involved (e.g., coaching, equipment), participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season, and listed on the eligibility or squad lists maintained for each sport. OCR uses this definition of participation to determine the number of participation opportunities provided by an institution for purposes of the three-part test.

OCR's analysis next determines whether athletic opportunities are substantially proportionate to the enrollment. In some circumstances it may be unreasonable to expect a school to achieve exact proportionality; a determination of substantial proportionality is made on a case-by-case basis, looking at the school's specific circumstances and the size of its athletic program.¹ OCR will also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team. If the shortfall of unaccommodated females is large enough that a viable sport could be added, the school has not met Part One.

The following chart shows the number of participation opportunities for both sexes, the proportion of participation opportunities available to females as compared to the overall female enrollment, as well as the number of opportunities that would be required to obtain proportionality.

Table 1. Jeff Davis Middle School Athletic Participation by Sex

Male Student Enrollment/ Percent	Female Student Enrollment/ Percent	Male Athletic Participants/ Percent	Female Athletic Participants/ Percent	Additional Participation Opportunities Needed for Females / Percent Disparity
336/49.92%	337/50.08%	189/62.58%	113/37.42%	76 / 12.66%

¹ Some examples of substantial proportionality are (1) where a school initially has exact proportionality, then a change in student enrollment shifts the male/female balance slightly, but proportion of athletes remains constant; or (2) where a school's enrollment rate for women is constant, and the school has been increasing opportunities to reach proportionality, but in the year that exact proportionality is met, the enrollment rate of women increases.

Conclusion – Part One

Based on the information, JDMS does not meet Part One; the participation opportunities for female athletes are not substantially proportionate with enrollment. The District did include competitive cheerleading as a sport in its data response.²

Part Two Analysis

In order to demonstrate compliance under Part Two of the three-part test, the District must show that it has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex. According to applicable OCR guidance, Part Two looks at an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion. *See* January 16, 1996 Dear Colleague Letter, “*Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test.*”

In addition, OCR will not find that an institution satisfies Part Two where it established teams for the underrepresented sex only at the initiation of its program for the underrepresented sex or where it merely promises to expand its program for the underrepresented sex at some time in the future.

Table 2. Jeff Davis Middle School History of Expansion

Girls' sports dropped in last 10 years	Girls' sports added in last 10 years	Plans to add more teams for girls
N/A	Softball (6 th & 7 th Grade) – 2011	N/A

The District has not eliminated any sports, for either sex, other than track, which due to lack of participation and financial hardship, was suspended from 2004-2009. The District does not have a published policy or procedures under which students, parents, or others may request that a sport or level be added or upgraded to interscholastic status. From the District's response, it appears that sports are added upon the request of a coach.

² OCR has never approved cheerleading as a sport and makes the decision on whether cheerleading is a sport on a case by case basis if a district asserts that it considers cheerleading a sport. The fact that the GHSA considers cheerleading a sport does not impact OCR's decision regarding whether to consider it as an interscholastic sport. If the District wants OCR to consider cheerleading at each school a sport, OCR will make a case by case decision as to whether the cheerleading teams qualify as interscholastic sports teams based on a number of factors, including what the main purpose is for cheerleading, i.e., either supporting another sports team or competition against other cheerleading teams.

Conclusion – Part Two

OCR concludes that the District cannot demonstrate a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the underrepresented sex – female students.

Part Three Analysis

Under Part Three, the focus is on full and effective accommodation of the interests and abilities of the District's students who are members of the underrepresented sex. In determining compliance with Part Three, OCR considers all of the following: a) whether there is unmet interest in a particular sport; b) whether there is sufficient ability to sustain a team in the sport; and, c) whether there is a reasonable expectation of competition for the team.

If all three questions are answered affirmatively, OCR will find that a recipient is not fully and effectively accommodating the interests and abilities of the underrepresented sex; thus, the recipient is not in compliance with Part Three.

OCR considered a variety of factors in analyzing all three questions of Part Three:

1. Interscholastic athletics offered at JDMS

Boys	Girls
Football	N/A
N/A	Softball (6 th & 7 th)
N/A	Softball (8 th)
N/A	Competitive Cheerleading
Basketball (6 th & 7 th)	Basketball (6 th & 7 th)
Basketball (8 th)	Basketball (8 th)
Wrestling	Wrestling ³
Baseball (6 th & 7 th)	N/A
Baseball (8 th)	N/A
Track	Track
Golf	Golf
Tennis	Tennis
Weightlifting	Weightlifting ⁴
Swimming	Swimming

³ Although the District identified this as a co-ed sport and the GHSA allows for co-ed participation in wrestling, no girls participated in the sport in 2013-2014.

⁴ Although the District identified this as a co-ed sport and the GHSA allows for co-ed participation in weightlifting, no girls participated in the sport in 2013-2014.

2. *Lack of an interest and abilities survey*

The District has not conducted surveys of student interest during the last 10 years and thus cannot answer the question if there is unmet interest in a particular sport or whether there is sufficient ability to sustain a team in the sport.

3. *Reasonable expectation of competition for the team*

The District admittedly does not offer all sports for both genders as sanctioned by the Georgia High School Association (GHSAs). JDMS competes in a conference which does not offer opportunities for competition in all GHSAs sanctioned events. JDMS does not field teams for cross country or soccer which are competitive within the middle school conference. According to the District, these sports have been requested for addition, but it has not been able to financially support the requests.

Conclusion – Part III

In determining compliance with Part Three, OCR considered the following:

- a) Whether there is unmet interest in a particular sport.

The District cannot show and OCR cannot determine whether there is any unmet interest in females for more levels of any existing sports or for a sport not currently offered at JDMS. There has not been a survey conducted within the last 10 years.

- b) Whether there is sufficient ability to sustain a team in the sport.

The District has not demonstrated through any means that the reasons certain sports are not offered at JDMS is because there is not sufficient ability to sustain such teams.

- c) Whether there is a reasonable expectation of competition for the team.

OCR has determined that for all sports sanctioned by the GHSAs there is reasonable expectation of competition in the area.

Based on the forgoing, OCR has determined that the District cannot demonstrate that it is fully and effectively accommodating the interests and abilities of the District's students who are members of the underrepresented sex under Part Three.

Overall Conclusion

Based on the above, the District has not demonstrated compliance with Part One, Two or Three of the Three Part Test. Therefore, OCR has determined that there is sufficient evidence to support a finding of noncompliance of Title IX with respect to Issue #1.

The District has entered into an agreement (Agreement) with OCR to ensure compliance with Title IX. OCR will monitor the District's implementation of the Agreement.

Issues #2 and #3

On October 8, 2014, OCR spoke with the Complainant regarding actions that the District has taken since she filed the complaint. She considers these issues resolved and does not want OCR to pursue them any further.

* * *

Pursuant to OCR procedures, OCR reminds the District that no recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in connection with a complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

If you have any questions or concerns regarding OCR's determination, please contact Scott Sausser, Compliance Team Leader, at (404) 974-9354.

Sincerely,

Cynthia G. Pierre, Ph.D.
Regional Director

Enclosure