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February 26, 2014

Dr. Lewis D. Ferebee  
Superintendent  
Indianapolis Public Schools  
John Morton-Finney Center for Educational Services  
120 E. Walnut St.  
Indianapolis, IN 46204

Re: Compliance Rev. #05-10-5002

Dear Dr. Ferebee:

This is to advise you of the resolution of the above-referenced compliance review that was initiated at the Indianapolis Public Schools (District) by the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX and its implementing regulation, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX.

OCR's review assessed whether the District provides boys and girls an equal opportunity to participate in its high school interscholastic athletics program by effectively accommodating the athletic interests and abilities of members of both sexes. The review also assessed whether the District provides equal opportunities to both sexes with regard to five components of its athletics program: the provision of equipment and supplies, the provision of locker rooms and practice and competitive facilities, the provision of medical and training facilities and services, the provision of support services, and the scheduling of games and practice times.

Based on the information gathered during the review, OCR determined that the District's interscholastic athletics program has not provided girls an equal opportunity to participate in high school interscholastic athletics by effectively accommodating students' interests and abilities, as required by Title IX and its implementing regulation. OCR also determined that the District has not provided girls equal opportunity in interscholastic athletics with respect to the provision of equipment and supplies, the provision of locker rooms and practice and competitive facilities, and the scheduling of games and practice times, as required by Title IX and its implementing regulation. The evidence did not support a conclusion of Title IX noncompliance with respect to the provision of medical and training facilities and services and support services. Discussions between OCR and the District resulted in the District's voluntary execution of the enclosed resolution agreement received by OCR on February 3, 2014, to address the areas of noncompliance under Title IX. These determinations are explained below.

## **Background**

On September 22, 2010, OCR notified the District that it had been selected for a compliance review under Title IX. The District is a large urban district that, in 2010-2011, enrolled 33,157 students in grades kindergarten through 12<sup>th</sup> grade at 64 schools, including 10 high schools. The District's athletics program is governed by the Indiana High School Athletic Association (IHSAA), which regulates competition among high schools. The IHSAA sanctions ten sports for girls and ten sports for boys.<sup>1</sup>

As part of the review, OCR obtained data from the District for the 2010-11 school year, toured the District's high school facilities, examined equipment and supplies provided to athletes, and conducted interviews with District staff and students. OCR's review focused on seven high schools that currently offer an athletics program to boys and girls:<sup>2</sup>

1. Arsenal Technical High School had a total student population of 2202, including 1046, or 47.5%, female students, and offered eight sports for boys (football, cross country, soccer, tennis, basketball, baseball, track, and golf) and eight sports for girls (cross country, volleyball, golf, basketball, soccer, softball, track, and tennis).
2. Broad Ripple Magnet High School had a total student population of 631, including 331, or 52.4%, female students, and offered nine sports for boys (football, soccer, tennis, wrestling, basketball, swimming, baseball, track, and golf) and seven sports for girls (volleyball, tennis, basketball, swimming, softball, track, and golf).
3. Crispus Attucks Medical Magnet High School had a total student population of 827, including 532, or 64.3%, female students, and offered seven sports for boys (track, tennis, soccer, golf, cross country, wrestling, and basketball) and six sports for girls (track, tennis, golf, cross country, basketball, and volleyball).
4. John Marshall Community High School had a total student population of 424, including 209, or 49.3%, female students, and offered six sports for boys (basketball, baseball,

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<sup>1</sup> The IHSAA sanctions for boys the sports of baseball, basketball, cross country, football, golf, soccer, swimming, tennis, track and field, and wrestling and for girls the sports of basketball, cross country, golf, gymnastics, soccer, softball, swimming, tennis, track and field, and volleyball.

<sup>2</sup>At the start of the review, the District also operated three additional high schools: Arlington Community High School, Thomas Carr Howe Community High School, and Emmerich Manual High School. In 2012, the state of Indiana authorized a takeover of these three high schools. The schools are currently operated as charter schools by a Turnaround School Operator (TSO), which is responsible for the implementation of an instructional program that results in improved student performance, the management of school operations and all aspects of administration, including extracurricular supports. The District explained to OCR that while it owns and is required by the state of Indiana to maintain the buildings of the three TSO-operated high schools, the District has no authority over the schools or the programs offered in the schools, including the athletic programs.

wrestling, track, cross country, and soccer) and six sports for girls (basketball, volleyball, softball, track, cross country, and soccer).

5. Northwest High School had a total student population of 836, including 373, or 44.6%, female students, and offered eight sports for boys (football, golf, soccer, basketball, wrestling, track, baseball, and cross country) and seven sports for girls (volleyball, golf, tennis, basketball, track, softball, and cross country).
6. Shortridge Magnet High School, which in 2010-11, was in its second year of existence and enrolled only freshmen and sophomores and had a total student population of 175, including 111, or 63.4%, female students, and offered four sports for boys (basketball, cross country, golf, and track) and four sports for girls (golf, volleyball, basketball, and track).
7. George Washington Community High School, which in 2009-10 had a total student population of 443, including 192, or 43.3%, female students and offered six sports for boys (soccer, cross country, basketball, wrestling, baseball, and track) and seven sports for girls (soccer, cross country, volleyball, basketball, track, softball, and swimming).<sup>3</sup>

Crispus Attucks and Shortridge are members of and governed by the Pioneer Conference, which is composed of 6 schools (including 4 private schools), and the other District high schools are members of and governed by the Indianapolis Public Schools Conference.

### **Legal Standards and Issues Investigated**

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states, in relevant part, 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 recipient, and no recipient shall provide any such athletics separately on such basis.

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<sup>3</sup> During OCR’s investigation, the District provided enrollment and participation data for all high schools for the 2009-2010 school year and for all high schools except for Washington for the 2010-2011 school year. The District indicated that it did not offer football at Washington in 2010-2011, but did not specify whether any sports offered in 2009-2010 were not offered the following year. On February 20, 2014, OCR received the 2010-11 enrollment and participation data for Washington from the District. The District provided raw data to OCR for 2010-2011 that suggested the interscholastic athletic participation opportunities for boys and girls may be proportionate to their respective enrollments. Because the District did not provide 2010-2011 enrollment and participation data for Washington until after it signed the Agreement, OCR used 2009-2010 data in its investigation and in finding that the interscholastic athletic participation opportunities for boys and girls at Washington were not provided in numbers substantially proportionate to their respective enrollments. OCR will review and verify this information and work with the District during the monitoring of the Agreement to ensure it demonstrates compliance with the three-part test at Washington.

The provision of equal opportunities with respect to the opportunity to participate in interscholastic athletics is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), also requires a recipient to provide equal athletic opportunity for members of both sexes at 34 C.F.R. §106.41(c)(2), in the provision of equipment and supplies, at 34 C.F.R. §106.41(c)(3), in the scheduling of games and practice time, at 34 C.F.R. §106.41(c)(7), in the provision of locker rooms, practice and competitive facilities, and at 34 C.F.R. §106.41(c)(8), in the provision of medical and training facilities and services.

In addition to the language from the Title IX regulations, OCR also uses as a means of assessing compliance the Intercollegiate Athletics Policy Interpretation issued on December 11, 1979 in the Federal Register (Policy Interpretation); the Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test, issued on January 16, 1996; and the Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three, issued on April 20, 2010. The provisions of these policy documents are generally applicable to interscholastic athletics programs.

### **Equal Participation Opportunities**

In assessing whether the interests and abilities of the members of both sexes are being effectively accommodated to the extent necessary to provide equal opportunity to participate in interscholastic athletics, OCR uses the three-part test first established in the Policy Interpretation. OCR also refers to other policy guidance that has been issued since the Policy Interpretation was issued and that specifically discusses the application of the three-part test.<sup>4</sup> An institution is in compliance if it has met any one of the following three parts of the test: (1) the athletic participation opportunities for boys and girls are provided in numbers substantially proportionate to their respective enrollments; or (2) there is a showing by the institution of a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex; or (3) it is demonstrated that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the present program. Each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. In essence, each part of the three-part test is a safe harbor, and no one part is favored.

#### **Part One: Participation in Proportion to Enrollment**

Under part one of the test, OCR determines the number of participation opportunities afforded to boys and girls in each school's interscholastic athletic program. OCR compares the participation opportunities to each school's enrollment, by sex, to determine whether athletic opportunities are substantially proportionate to the enrollment.

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<sup>4</sup> <http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>;  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.html>

As noted above, the District offers interscholastic athletic opportunities at seven high schools. Data from the 2010-11 school year showed that the District offered, at one or more of the high schools, interscholastic athletic opportunities to boys in the sports of baseball, basketball, cross country, football, golf, soccer, swimming, tennis, track and field, and wrestling<sup>5</sup> and interscholastic athletic opportunities to girls in the sports of basketball, cross country, golf, soccer, softball, swimming, tennis, track and field, and volleyball. Total student enrollment in the seven high schools was 5,538 students, with 2,744 boys (49.5%) and 2,794 girls (50.5%). There were approximately 1,466 total participants in the District's athletic program at the seven high schools, with 945 boys (64.5%) and 521 girls (35.5%). Overall at the seven schools, the disparity between the enrollment rate of girls and their interscholastic athletic participation rate was 15 percentage points, representing a total of approximately 445 additional participation opportunities needed for girls to be substantially proportionate to their enrollment without cutting any athletic opportunities for boys in the District.<sup>6</sup> OCR examined the data by school in order to determine whether, at each school, the interests and abilities of the members of both sexes were being effectively accommodated to the extent necessary to provide equal opportunity to participate in interscholastic athletics.

OCR determined that the athletic program at one of the seven high schools, Marshall, effectively accommodates the athletic interests and abilities of students of both sexes in that the interscholastic athletic participation opportunities for boys and girls were provided in numbers substantially proportionate to their respective enrollments.

However, information provided by the District revealed that girls were underrepresented in the interscholastic athletic program at the remaining six high schools, with the disparities between their enrollment and interscholastic athletic participation rates ranging from a low of 7.8 percentage points to a high of 20.2 percentage points.

Accordingly, OCR concluded that the District was not providing participation opportunities to girls in numbers substantially proportionate to their respective enrollments at six high schools: Arsenal, Crispus Attucks, Broad Ripple, Northwest, Shortridge, and Washington. As such, girls are underrepresented in the District's high school athletics program.

## **Part Two: History of Program Expansion**

In making a determination under part two of the test, OCR assesses whether each school's past actions have expanded participation opportunities for the underrepresented sex in a manner that

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<sup>5</sup> Girls were allowed to participate on a boys' wrestling team.

<sup>6</sup> As noted, the District did not provide 2010-11 data for Washington during OCR's investigation and, as a result, OCR used 2009-10 data in its investigation. Thus, the Districtwide data referenced by OCR include 2009-2010 rather than 2010-2011 data for Washington. As a result, the cited participation rates for girls for the 2010-11 school year and additional participation opportunities are "approximate."

was demonstrably responsive to their developing interests and abilities. OCR considers evidence such as the school's record of adding or upgrading teams to interscholastic status, increasing the numbers of interscholastic athletic participants, and responding affirmatively to requests by students or others for addition or elevation of sports. Further, OCR considers evidence of a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex by examining the school's current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students. OCR also considers the school's current implementation of a plan of program expansion that is responsive to students' developing interests and abilities.

OCR determined that none of the six schools that did not meet part one of the test (Arsenal, Crispus Attucks, Broad Ripple, Northwest, Shortridge, and Washington) has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of girls. For five of the six schools, the District was unable to provide documentation showing when each sport was added or of growth in participation numbers for the underrepresented sex, girls, over time. None of the six schools had a published policy or procedure for requesting the addition of sports or sports levels and none had a plan for program expansion for the underrepresented sex. Some of these schools had also dropped sports for girls. Accordingly, OCR determined that the District did not meet part two of the three-part test.

### **Part Three: Interests and Abilities**

Under part three of the test, the school may demonstrate that, despite disproportionate participation rates and the lack of a history and continuing practice of program expansion for the underrepresented sex, the interests and abilities of the underrepresented sex are, nevertheless, being fully and effectively accommodated by the current athletics program. In making this determination, OCR considers whether there is (a) unmet interest in a particular sport; (b) sufficient ability to sustain a team in the sport; and (c) a reasonable expectation of competition for the team in the school's normal competitive region. If all three conditions are present, then OCR will find that the school has not fully and effectively accommodated the interests and abilities of the underrepresented sex.

None of the six schools that did not meet part one or part two of the test (Arsenal, Crispus Attucks, Broad Ripple, Northwest, Shortridge, and Washington) provided assessment information demonstrating that there is not interest among girls in sports not currently offered at the school. In fact, OCR found evidence of potential interest among girls in rugby at Arsenal, softball at Crispus Attucks, bowling at Broad Ripple, swimming at Northwest, and rowing and softball at Shortridge, and evidence of community programs in gymnastics and golf, two sports not offered at Washington. At each of the six schools there was at least one sport for girls sanctioned by the Indiana High School Athletic Association that was not being offered at the school. None of these schools had conducted any recent survey of students' interest in sports not being offered at the school.

Accordingly, OCR concluded that the District did not meet part three of the three-part test at these six schools.

As the District did not meet any part of the three-part test, it did not effectively accommodate the athletic interests and abilities of students of both sexes to the extent necessary to provide equal athletic opportunity, as required by the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1).

### **Other Athletic Benefits and Opportunities**

As noted above, 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 athletics offered by a recipient district. In ensuring compliance with this section of Title IX, OCR examined several aspects of the District’s program to ensure that it was providing girls an equal opportunity to benefit from its interscholastic athletics program, in accord with 34 C.F.R. § 106.41(a) and (c), as well as the Policy Interpretation mentioned above. OCR specifically examined the following areas:

- A. Equipment and supplies, in accord with 34 C.F.R. § 106.41(c)(2).
- B. Locker rooms, practice facilities, and competition facilities, in accord with 34 C.F.R. § 106.41(c)(7).
- C. Scheduling of games and practice times, in accord with 34 C.F.R. § 106.41(c)(3).
- D. Medical and Training facilities and services, in accord with 34 C.F.R. §106.41(c)(8), and,
- E. Support Services, in accord with 34 C.F.R. § 106.41(c).

In considering each of these areas in the District’s high school interscholastic athletics program, OCR conducted an overall review of the boys’ and girls’ teams at each high school. In other words, OCR compared the equipment, facilities, scheduling, medical and training, and support services provided to the teams in the girls’ programs at each school to the equipment, facilities, scheduling, medical and training, and support services provided to the teams in the boys’ programs at the same school. When disparities were identified between the girls’ and the boys’ teams at a school, *e.g.*, if a boys’ team received a superior benefit in some way, OCR considered whether the benefit provided to the boys’ program was offset by similar benefit to any of the teams in the girls’ program at the school. In making this “program-wide” comparison, and before OCR concluded that a benefit to one of the teams in the girls’ program offset a benefit provided to one of the teams in the boys’ program, OCR considered whether the offsetting benefits were equivalent or equal in effect. In other words, OCR only found the benefit offsetting if it had the same or a similar effect on the student-athlete(s) or team within this program component.

Once OCR identified disparities and found no evidence of offsetting, we considered whether the differences between the benefits provided to the boys' and girls' programs were negligible or whether they were the result of legitimate, nondiscriminatory factors, and then determined whether the identified disparities for which there were no legitimate, nondiscriminatory reasons resulted in the denial of equal opportunity to boys or girls, either because the disparities collectively were of a substantial and unjustified nature or because the disparities in the program component were substantial enough by themselves to deny equal athletic opportunity. The result of this comparison was not to ensure identical benefits, opportunities, or treatment, but rather, to ensure that, overall, the athletics program at each high school provided equivalent benefits to boys and girls.

School districts have a responsibility under Title IX to ensure that equivalent benefits and services are provided to members of both sexes in its athletics programs, regardless of their funding source(s) for these benefits and services. Thus, OCR considers benefits and services provided through the use of private funds, including booster club funding, in combination with all other benefits and services. Where booster clubs or private funds provide for benefits or services that assist only teams of one sex, the school district must ensure that teams of the other sex receive equivalent benefits and services. If booster clubs or private funds provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the institution shall take action to ensure that benefits and services are equivalent for both sexes.

#### **Equipment and Supplies - 34 C.F.R. § 106.41(c)(2)**

The regulation at 34 C.F.R. § 106.41(c)(2) states that, in determining whether equal opportunities are provided to both girls and boys in an athletics program, OCR will consider the provision of equipment and supplies. The Policy Interpretation states that equipment and supplies include “uniforms, other apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight training equipment.” OCR considers five factors in determining whether a school district is providing equal opportunity in this area: (1) quality; (2) amount; (3) suitability; (4) maintenance and replacement; and (5) availability of equipment and supplies.

In conducting its review of this area, OCR examined the equipment and supplies provided to boys' and girls' teams at each school, interviewed the District Athletic Director (AD) and the AD of each high school, obtained information from coaches, and interviewed athletes from boys' and girls' teams. According to several ADs, the District pays for salaries and transportation with taxpayer funds, but they must raise money through ticket sales and fundraisers to pay for equipment and supplies. Sources of funds cited by one or more ADs were fundraisers, booster clubs, and donations of money or equipment from local businesses.



*Arsenal*

The investigation revealed the concerns listed below in the area of equipment and supplies at Arsenal:

- According to athletes, the girls' basketball team had to pay full price for shoes (\$120), while the boys' basketball team paid a discounted price (\$40).
- The boys' soccer players reported that the school did not provide soccer balls, so their coach brought in soccer balls himself.
- The softball players reported that their catcher's masks were broken and most of the softball equipment was old or donated. The softball coach reported that the helmets needed hardware and the team needed new catcher's equipment.
- The boys' soccer team reported that they needed new uniforms, as they had not received new uniforms in over four years, although they had two sets of jerseys and shorts.
- Baseball athletes reported that they did not have enough competitive jerseys in one color for the whole team. The team received new uniforms two years ago and last year had another set donated which does not match.
- Volleyball athletes reported not having enough shorts for all players.
- Softball athletes also reported that the team did not have enough varsity uniforms during the 2010-11 school year.
- The volleyball athletes reported they received new uniforms during the 2010-11 school year, but the uniforms were too large and appeared to be soccer jerseys.
- Softball athletes reported that they received new uniforms two years ago but the pants were too small for most of the girls and they ripped.
- Boys' track and field and cross country athletes reported that their uniforms did not fit properly.
- The boys' soccer team reported that their uniforms were often not washed between games. Softball players reported that twice during the 2010-11 school year, the team's uniforms were not washed between games.

Similar boys' and girls' teams appeared to receive similar equipment and supplies. The evidence indicated that differences between boys' teams and girls' teams were offset: four boys' teams

(baseball, soccer, track, cross country) in comparison to two girls' teams (softball and volleyball) reported problems with uniforms. However, players on the boys' basketball team pay \$80 less for shoes than players on the girls' basketball team. While there also were not enough soccer balls for the boys' soccer team, the equipment for the softball team was old and some was broken. Based on the foregoing, there is insufficient evidence to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Arsenal with respect to the provision of equipment and supplies.

### *Crispus Attucks*

The investigation revealed the concerns listed below in the area of equipment and supplies at Crispus Attucks:

- The girls' track coach advised OCR the program's warm-ups were old and in need of replacement.
- Volleyball athletes noted that the numbers on jerseys were peeling off, which OCR confirmed during its visual inspection, a problem acknowledged by the Crispus Attucks AD; he said the uniforms were only two years old.
- The soccer coach rated the quality of the team's equipment and supplies as adequate, but expressed a desire to have more soccer balls.
- Several athletes indicated that they needed to share warm-ups with other teams. In particular, boys' and girls' cross country runners shared their warm-ups with the soccer team, wrestlers shared their warm-ups with soccer and junior high wrestling, and boys' and girls' track athletes shared their uniforms with the middle school track program. They did not indicate that there were any situations when the needed uniforms or warm-ups were not available.

The evidence established that some sports shared warm-ups and uniforms with others, but this practice did not adversely affect one gender to a greater degree. The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The boys' soccer team needed more soccer balls, a problem that is offset by the old warm-ups provided to the girls' track team. Volleyball players expressed a concern about peeling numbers, though the jerseys were only two years old. This disparity, by itself, is not sufficient to deny girls equal opportunity in this area. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Crispus Attucks with respect to the provision of equipment and supplies.

### **Broad Ripple**

The investigation revealed the concerns listed below in the area of equipment and supplies at Broad Ripple:

- Several football players asserted that their uniforms were old and in need of replacement. OCR's inspection of the equipment showed that the football uniforms were noticeably old and that several uniforms had blood stains.
- The volleyball coach informed OCR that the sport's equipment was substandard but provided no further details. According to members of the girls' volleyball team, the practice volleyballs were old and had tears and bumps. During OCR's inspection, OCR observed that the practice balls, although not new, were regulation and usable for practice and competition.
- Members of the girls' basketball team told OCR that their jerseys were six years old and in need of replacement; however, the AD stated that the team's jerseys, both home and away, were purchased one year ago, and OCR's review of the uniforms, located in the basketball closet, showed that they appeared relatively new and were in good condition.
- The members of the girls' softball team all criticized the quality of their bats and the number of practice softballs. OCR's review revealed a large bucket of relatively new softballs that the AD asserted were used for practice. OCR observed that many softball bats used by the girls did not have any paint left; however, OCR observed the boys' baseball bats were in similar condition.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that the football and volleyball teams have poor quality uniforms or equipment and that both the baseball and softball teams have bats in poor condition. These problems offset one another. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Broad Ripple with respect to the provision of equipment and supplies.

### **Marshall**

The investigation revealed the concerns listed below in the area of equipment and supplies at Marshall:

- The girls' basketball team reported having "old" jerseys and no warm-ups. The volleyball coach reported that middle school and high school volleyball teams shared uniforms.

- Baseball players described their uniforms as “old” and “1945 style Yankees uniforms.”
- The soccer, cross country and track teams reported sometimes not having enough shorts to dress all players. Soccer players routinely changed out their jerseys during games when the players changed out positions due to lack of uniforms.
- The boys’ basketball team reported not having enough cones to do warm-up drills.
- The softball team did not have enough helmets, and reported they were all different colors. The softball team also had only three bats for use.
- The baseball team reported using old mitts with little or no padding, and the catcher’s equipment being poor. The baseball coach reported that a few of the bats were not regulation, and needed to be replaced.
- The soccer team reported that one of the goals was broken.
- The track coach reported that overall, the equipment and supplies for the team were “substandard.”
- The volleyball coach reported that all of the equipment and supplies were donated by the head coach and the assistant coach. The volleyball coach reported the quality of equipment and supplies was “substandard.”
- The girls’ basketball team reported having jerseys that were previously used by a boys’ middle school team. Players on the girls’ softball team were assigned boys’ pants.

The evidence did not indicate differences between boys’ teams and girls’ teams except in the following respects. The evidence established that the three coeducational teams (soccer, cross country and track) reported regularly not having a sufficient number of uniforms for the athletes on each team. The evidence also established that the girls’ basketball and softball teams have uniforms that are made for boys, while the volleyball team has to share uniforms with a middle school team. The softball and boys’ basketball teams both reported not having enough equipment, while the baseball team has poor catcher’s equipment. Volleyball equipment and supplies are substandard, according to the coach. Overall, OCR determined that the disparities identified adversely affected girls to a greater degree than boys. Therefore, based on the foregoing, the evidence shows that the District failed to provide equal athletic opportunities to girls at Marshall with respect to the provision of equipment and supplies.

*Northwest*

The investigation revealed the concerns listed below in the area of equipment and supplies at Northwest:

- According to the football coach, the practice and game uniforms were 6-7 years old. OCR noted in its on-site review of the equipment that the football uniforms were noticeably old.
- The girls' volleyball coach indicated that the sport's equipment was substandard, but provided no further detail. According to members of the girls' volleyball team, the practice volleyballs were old and had tears and bumps. However, OCR's review of the equipment locker located eight practice volleyballs, many of which were relatively new, and five unused official game balls.
- According to OCR's interviews of members of the girls' basketball team, their jerseys were six years old and in need of replacement. However, the girls' basketball coach stated that the team's jerseys, both home and away, were purchased two years ago. OCR's review of the uniforms showed that the girls had home and away jerseys, home and away shorts and warm-ups. These items seemed relatively new, and were more consistent with being two years old as opposed to six.
- Members of boys' and girls' track and cross country teams asserted that they shared sweat suits with the cheerleaders and wrestlers.
- The boys' track and cross country athletes also commented how old the uniforms were for track and cross country. However, according to the boys' cross country coach, performance tops were purchased last year; the coach did note that the sweat suits were outdated.
- Boys' and girls' track athletes and the coach of the girls' track team also stated that the equipment was outdated, including starting blocks, hurdles, high jump bars, and pits.
- According to the softball coach, the equipment and supplies provided to the softball team were substandard. The team members asserted to OCR that the coach had to purchase additional bats, and the softball coach asserted that he donated bats to the team. OCR's review of the school's softball supplies shows that there were un-issued softball uniforms, and extra balls, helmets, and catcher's gear in a storage area at the school. However, the uniforms were not all the same, including different fonts and colors reflecting at least three versions, with not enough of any one for the whole team.

- The boys' track athletes stated that the high jump pit was not suitable; this pit was used by boys and girls.

The evidence established problems with the track and cross country equipment and supplies that affect both boys and girls. The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that the football and softball teams had problems with uniforms, disparities that offset one another. The remaining issue was a concern expressed that the volleyball equipment was substandard, with specific reference by athletes to balls. However, this claim was not supported by OCR's inspection of the balls. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Northwest with respect to the provision of equipment and supplies.

### **Shortridge**

The investigation revealed the concerns listed below in the area of equipment and supplies at Shortridge:

- The boys' track, co-ed soccer, and girls' volleyball teams had to share their uniforms with other teams. Volleyball players shared their uniforms with the middle school program, but the AD always ensured the team had their uniforms on game day. The boys' track athletes and soccer players had to share their uniforms with one another during competition because of a shortage of uniforms.
- The girls' basketball players said their uniforms were too small and shrinking.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that the boys' track and soccer teams, the latter of which also includes some girls, were disadvantaged by not having enough uniforms, a disparity that is offset by the deficiencies with uniforms identified by girls' basketball and volleyball players. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Shortridge with respect to the provision of equipment and supplies.

### **Washington**

The investigation revealed the concerns listed below in the area of equipment and supplies at Washington:

- Members of the girls' basketball team informed OCR that their uniform shorts were reversible for home and away, and that the boys had separate home and away uniforms. Additionally, the girls mentioned to OCR that their team only had one set of uniform

tops. OCR discovered that the girls' home basketball uniforms were old and had reddish stains on them. Therefore, those uniforms were not issued to the team.

- Boys' and girls' soccer players informed OCR that they shared uniforms. According to the AD, he ordered separate uniforms for the 2011-2012 school year for the girls' soccer team.
- The softball players mentioned to OCR that their uniforms were six years old. One softball athlete said she had the same uniform all four years. Another softball athlete mentioned her uniform top had holes and tears. OCR found a storage bin filled with a complete set of 13 unused softball uniforms, which the AD did not know existed. According to the baseball players interviewed by OCR, their uniforms were roughly 2-4 years old.
- One softball player informed OCR that the quality of the bats provided to the team was poor. OCR noted however, the bats provided to both the baseball team and the softball team were regulation and of similar quality. All bats were worn.
- A girls' swimmer stated that the girls' swimming team, which she said consisted of two participants, did not have swimsuits provided and practiced in swimsuits that the school provided to the general public when the school pool was open to the public. The AD disputed this assertion.
- One girls' track athlete claimed the team did not receive a sufficient number of tops, which meant teammates swapped tops during competitions so participants had matching uniforms during relay events. During OCR's visit, the AD found a box of 30 unused girls' track uniforms.
- One girls' track athlete said boys' and girls' track teams shared uniforms and that the boys received first choice; she said that by the time the girls' track athletes got to choose, the only uniforms left were ill fitting.
- Softball athletes advised OCR they had to launder their uniforms.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established deficiencies in the amount of uniforms for the girls' basketball team and problems with the softball and girls' track uniforms, including a failure to distribute new uniforms to the softball and track athletes. Softball athletes also had to launder their own uniforms. Therefore, based on the foregoing, the evidence shows that the District failed to provide equal athletic opportunities to girls at Washington with respect to the provision of equipment and supplies.

### **Conclusion**

Overall, OCR determined that the disparities identified above with respect to the provision of equipment and supplies at Marshall and Washington adversely affected girls to a greater degree than boys and were substantial enough to deny equal athletic opportunities to girls at those two high schools. OCR also determined that there is insufficient evidence to conclude that the District failed to provide equal athletic opportunities to students of both sexes at the remaining five high schools with respect to the provision of equipment and supplies.

### **Locker Rooms and Practice and Competitive Facilities -- 34 C.F.R. § 106.41(c)(7)**

The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), requires a recipient to provide equal athletic opportunity for members of both sexes, including at 34 C.F.R. § 106.41(c)(7), in the provision of locker rooms, practice and competitive facilities. OCR assesses six factors in determining whether a recipient provides equal opportunities to boys and girls in the provision of locker rooms and practice and competitive facilities: (1) the quality and availability of the facilities provided for practice and competitive events; (2) the exclusivity of use of facilities provided for practice and competitive events; (3) the availability of locker rooms; (4) the quality of locker rooms; (5) the maintenance of practice and competitive facilities; and (6) the preparation of facilities for practice and competitive events.

In conducting its review of this area, OCR examined the locker rooms and practice and competitive facilities, interviewed the District AD and the AD of each high school, obtained information from coaches, and interviewed athletes from boys' and girls' teams.

### **Arsenal**

The investigation revealed the concerns listed below in the area of locker rooms and practice and competitive facilities at Arsenal:

- The softball field did not have lights, outfield fencing, dugouts, bullpens or a scoreboard. There were no restrooms located near the field, and no concession stand. According to the AD, parents occasionally set up a table for concessions during games, and players and spectators used the nearby building restrooms for practices and games. In contrast, the baseball field at Manual High School, used by the Arsenal team for games, had all of the features reported as lacking at the Arsenal softball field, including lights; the athletes drove to this baseball field.
- Softball players interviewed by OCR reported that the field got particularly muddy following rain. The athletes also reported that they had three games called before completion because of darkness due to the field not having lights. The softball coach reported that dirt was needed for leveling, and the field needed a permanent mound.



- Boys’ and girls’ soccer players reported there were big dips and dry areas on the field, and the field was bigger than required. The girls’ soccer coach reported that the field needed to have low spots fixed and needed to be better watered.
- There were six tennis courts located on campus with benches by each court. Athletes reported that the courts were starting to crack. A small storage unit was used solely by the tennis team. The AD reported that he had requested that the courts, used by boys’ and girls’ teams, be resurfaced.
- The volleyball team reported that their net “drooped down.”
- Due to structural damage to the second gym, the school used only one gym in 2010-2011. The wrestling team and freshman boys’ basketball teams temporarily practiced in facilities at other schools.
- The softball coach reported that some practices were cancelled or moved to accommodate middle school soccer games, and the girls’ soccer coach reported that some practices were moved to accommodate boys’ soccer games. These coaches did not indicate how often this occurred.
- Girls’ soccer players reported to OCR that they often changed in restrooms in a building located closest to the field because the locker rooms were too far away. Boys’ soccer players did not specify where they dressed.
- According to the AD, maintenance staff mowed the grass and the District’s facilities management department lined the soccer field. However, according to athletes interviewed by OCR, the field did not get watered unless the team members did it themselves.

The evidence indicated differences between boys’ teams and girls’ teams in the following respects: The evidence establishes that the softball field does not have lights, outfield fencing, dugouts, bullpens, a scoreboard, concessions, or nearby restrooms. The baseball field at Manual currently being used by the Arsenal baseball team has all of these features. The volleyball net is droopy and the softball team had practices cancelled to accommodate middle school soccer games. In addition, the varsity boys’ basketball team has exclusive use of a new locker room but the girls’ basketball team does not. Therefore, based on the foregoing, the evidence shows that the District failed to provide equal athletic opportunities to girls at Arsenal with respect to the provision of locker rooms and practice and competitive facilities.

### **Crispus Attucks**

The investigation revealed the concerns listed below in the area of locker rooms and practice and competitive facilities:

- The wrestling team practiced in a very small room it shared with the junior high wrestling program. The wrestling team’s facility would be crowded with its 14 participants.
- Volleyball players noted that their net sagged. The Crispus Attucks AD agreed that the net needed to be replaced.
- The soccer field’s quality was poor, *i.e.*, bumpy with many weeds. Boys’ soccer players agreed their practice and competitive facility was “horrible.”
- Prompted by a student concern, OCR observed the six-lane track used by boys’ and girls’ track athletes was harder than tracks at other District high schools.
- The tennis teams practiced at a facility operated by the local park district that had only two courts. Girls’ tennis players said two courts were insufficient to accommodate the 16-member team. They said they had to rotate court time.
- The wrestling team practiced in a very small room it shared with the junior high wrestling program.
- Boys rated their locker room as poor because various people claimed to have seen roaches, a bat, and a rat. OCR saw none of this while observing a clean locker room that was not in disrepair.

The evidence establishes that problems with the track equally affected boys and girls. Also, the players on one boys’ team and the players on one girls’ team had to prepare their own facilities for competition. The evidence did not indicate differences between boys’ teams and girls’ teams except in the following respects. The evidence established that girls are disadvantaged by a lack of tennis courts and a sagging volleyball net, while boys are disadvantaged by a poor quality soccer field and small wrestling practice room. OCR determined that these disparities offset one another. Therefore, based on the foregoing, the evidence is insufficient to show that the District failed to provide equal athletic opportunities to students of both sexes at Crispus Attucks with respect to the provision of locker rooms and practice and competitive facilities.

### **Broad Ripple**

The investigation revealed the concerns listed below in the area of locker rooms and practice and competitive facilities at Broad Ripple:

- OCR noted that in the wrestling room, there was no padding or other participant protection on the walls.
- According to a coach and girls' track athletes, the track was old, in need of repair, and only had six lanes instead of eight. OCR noted that the long jump and triple jump runway and cage for discus and shot were well worn.
- The football field quality was poor in that its grass coverage is poor and it has many weeds on it.
- The right field fence at the softball field was only 140 feet from home plate, 45 feet shorter than the National Federation of High Schools minimum guideline distance.
- Volleyball athletes indicated that the volleyball nets were heavy and outdated, but OCR observed that the volleyball nets were regulation and usable for practice and competition.
- According to the AD, there were conflicts between football and marching band practice; he said that as a performing arts school, the marching band is an important school institution.

The evidence established problems with the track that affect boys and girls. The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that the football field is of poor quality and the wrestling room walls lack padding, while the right field fence at the softball field is not regulation distance from home plate. The lack of a regulation softball field is sufficiently disadvantageous to overcome the disadvantage of the poor football field and lack of padding on the walls of the wrestling room. Therefore, based on the foregoing, the evidence shows that the District failed to provide equal athletic opportunities to girls at Broad Ripple with respect to the provision of locker rooms and practice and competitive facilities.

### **Marshall**

The investigation revealed the concerns listed below in the area of locker rooms and practice and competitive facilities at Marshall:

- The volleyball coach reported that the quality of the main gym was "poor" but the coach did not explain why.
- The auxiliary gym was used for practices when there are multiple teams seeking to practice indoors at the same time. Athletes also reported that the auxiliary gym was "small and stinks" and was not regulation size. However, the girls' basketball coach

reported that the auxiliary gym was regulation size and was similar to the main gym in court markings and court length, although the coach noted it could use better lighting and a cleaner floor. Overall, the coach rated the practice facility as “sufficient” to meet the team’s practice needs.

- While the wrestling room, used for practices, was of good size to accommodate a wrestling team, athletes interviewed reported that the room needed better ventilation.
- The baseball field appeared to be in poor condition. There was cyclone fencing around the perimeter of the field, and one set of bleachers. The infield was made of brick dust. However, athletes interviewed by OCR described the infield as “good” and the outfield as “smooth.” There were fenced in dugouts and outfield fencing. The backstop was low, and there was no concessions stand or scoreboard. There were no restrooms. The baseball coach reported there were a few dips in the infield that pooled water after it rained, but overall described the facilities as “fair.”
- The softball field was in poor condition. The AD explained that the field was unfinished. He said that the District began constructing the field, but simply stopped and had not responded to his requests to complete the field. The AD said he had also requested a dugout and bleachers from facilities management, without success. There was cyclone fencing down the first base line. However, there was no left field or outfield fence. The infield was made of a sandy white substance. In lieu of dugouts, the home and away sides had a bench. There was no concessions stand, scoreboard, restrooms or tarp for the field.
- The soccer team used the former football field for practices and games. Athletes described the field condition as “raggedy” with lots of holes. Athletes also reported the field was not regulation size because it was too short. There were no restrooms or a concession stand open during games. There were bleachers for fans. There was a scoreboard, but it was nonfunctioning.
- The track, which was in fair condition, had a long jump pit, which the track coach described as “poor.” The bleachers were in poor condition. There were no restrooms or a concession stand open during track meets. The track coach reported that the competitive facility had no lights and had very limited seating and the track needed to be resurfaced and relined. The track coach also reported that there was not a throw ring for shot put, or a discus cage.
- The boys’ basketball athletes reported that the main gym was crowded when the volleyball team and their season overlapped. However, the athletes reported that the AD was able to make out a schedule to accommodate all of the teams. The rest of the athletes did not report any issues with availability of their facilities.

- Girls' basketball players reported that they regularly practiced in the auxiliary gym and usually only practiced in the new gym a day or so before a competition. Contrary to the testimony of the athletes, the girls' basketball coach reported that the team received priority during the season for use of the competitive facility.
- The lockers were old and in poor condition in the main boys' locker room and the middle school boys' locker room used by Marshall's boys' basketball team. The shower area leaked.

The evidence established problems with the soccer field, track, and gymnasium, all of which affected boys' and girls' teams alike. The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that the softball field is unfinished and lacks dugouts, outfield fencing or a backstop, while the baseball field has all of these features. The evidence further established that the wrestling room has poor ventilation; after carefully considering the evidence, OCR has determined that this deficiency does not offset the deficiencies of the softball field. Therefore, based on the foregoing, the evidence shows that the District failed to provide equal athletic opportunities to girls at Marshall with respect to the provision of locker rooms and practice and competitive facilities.

### *Northwest*

The investigation revealed the concerns listed below in the area of locker rooms and practice and competitive facilities at Northwest:

- The long jump and triple jump runway and cage for discus and shot were well worn.
- There were no amenities, lights, restrooms, or bleachers at the local park used by boys' and girls' tennis.
- Both the baseball and softball coaches rated their respective diamonds as poor and substandard, and the softball field lacked dugouts.
- According to the AD, Riverside was an easier golf course, and therefore more advantageous to the girls' team than Douglas, where the boys' golf team played.
- According to members of the girls' basketball team, the boys' team had priority over them because the boys always got to use the Main Gym for practice before a game, and the girls' team did not. However, the girls' basketball coach denied this and stated that there was an equitable rotation. The Northwest AD also said that whichever team had an upcoming competition practiced in the Main Gym. The boys' basketball players also said the team with the next home game used the Main Gym for practice.

The evidence established problems with the track and tennis facilities that affect both boys and girls. Evidence did not substantiate a claim by members of the girls' basketball team that the boys' basketball team was given priority in the use of the Main Gym before games. The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that the baseball and softball facilities were of similarly poor quality, although the softball field lacked dugouts. This is partially offset by the advantage of the girls' golf facility over the boys' golf facility. Under these circumstances, a remaining disparity pertaining to softball dugouts by itself is not sufficient to deny girls equal opportunity in this area. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Northwest with respect to the provision of locker rooms and practice and competitive facilities.

### **Shortridge**

Testimony and OCR's observations revealed that all facilities were of average to excellent condition, with no exceptions. The facilities are always available for practices and competitions.

The boys' and girls' track teams simultaneously used the track, but this arrangement did not cause any concerns, according to boys and girls. All other teams had exclusive use of their facilities during practice and competitions.

No student athlete of either sex expressed a concern about the quality or availability of the locker rooms or about the preparation or maintenance of facilities.

The evidence did not establish any disparities in the provision of locker rooms and practice and competitive facilities at Shortridge. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Shortridge with respect to the provision of locker rooms and practice and competitive facilities.

### **Washington**

The investigation revealed the concerns listed below in the area of locker rooms and practice and competitive facilities at Washington:

- The swimming pool was only four feet deep (while the AD said this meant that the school could not host swim meets, information from the National Federation of High Schools indicated that swim meets could be held at such pools, but that platforms for entering the pool could not be used).
- OCR observed that the baseball and softball fields were in poor condition and had no amenities.

- The soccer field was in poor condition, as it was bumpy with many weeds growing there.

The evidence established that the baseball, softball, and soccer fields were all in poor condition, equally affecting both boys and girls. The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. Every boy had access to a full-size locker whereas girls used half-size lockers. However, the girls did not express concern about the size of the lockers not being adequate to meet their needs and OCR's observation raised no independent concerns. In addition, the swimming pool was only four feet deep. This, by itself, was not sufficient to deny girls equal opportunity in this area, as national standards allow for use of a pool of this depth as long as starting platforms are not used. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Washington with respect to the provision of locker rooms and practice and competitive facilities.

### **Conclusion**

Overall, OCR determined that the disparities identified with respect to the provision of locker rooms and practice and competitive facilities at Arsenal, Broad Ripple, and Marshall adversely affected girls to a greater degree than boys and were substantial enough to deny equal athletic opportunities to girls. OCR also determined that there is insufficient evidence to conclude that the District failed to provide equal athletic opportunities to students of both sexes at the remaining four high schools with respect to the provision of locker rooms and practice and competitive facilities.

### **Scheduling of Games and Practice Times - 34 C.F.R. § 106.41(c)(3)**

In assessing whether a recipient is providing boys and girls equivalent benefits and opportunities with respect to the scheduling of games and practice time in compliance with 34 C.F.R. § 106.41(c)(3), OCR considers the number of competitive events per sport, the time of day that competitive events and practice opportunities are scheduled, the number and length of practice opportunities, and the opportunities to engage in pre-season and post-season competition.

In conducting its review of this area, OCR analyzed the schedules of all boys' and girls' teams, interviewed the District AD and the AD of each high school, obtained information from coaches, and interviewed athletes from boys' and girls' teams. State rules limit the number of competitive events in each sport. OCR calculated the percentage of allowed events that each high school offered.

### **Arsenal**

Arsenal's girls' teams competed in 59% of allowable events, while its boys' teams competed in 70% of allowable events.

None of the athletes interviewed by OCR expressed any concerns with the scheduling of competitions. The boys' basketball team played 13 or 69.4% of its 19 games at the optimal or prime time, on Friday or Saturday night, while the girls' basketball team played 2 or 11.1% of its 18 games on a Friday or Saturday night.

The AD reported that boys' and girls' basketball alternated practice times, with one practicing at 3:00 p.m. and the other at 5:30 p.m. Girls' basketball athletes interviewed by OCR reported they routinely practiced later on weeknights although they were supposed to alternate with the boys' team to practice directly after school some nights. Boys' basketball athletes interviewed by OCR reported they rotate times with the girls' basketball team for practices, but mostly the girls practiced in the evening.

No differences between boys and girls were revealed in the area of pre-season and post-season competition.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence establishes that girls participate in proportionately fewer allowable contests than boys and boys are provided significantly more opportunities to play basketball at prime time; OCR also noted that boys are provided preference in scheduling practices in basketball. Therefore, based on the foregoing, the evidence shows that the District failed to provide equal athletic opportunities to girls at Arsenal with respect to the scheduling of games and practice time.

### *Crispus Attucks*

Girls' teams participated in 79% of the maximum allowable number of contests, while boys' teams competed in 73% of the maximum allowable number of contests.

The boys' basketball team had 12 or 54.5% of its 22 games at the optimal or prime time on a Friday or Saturday while the girls' basketball team had 9 or 40.9% of its 22 games being scheduled on a Friday or Saturday; excluding the city tournament in which both boys' and girls' basketball competed and one other boys' basketball game, all Friday and Saturday games were held in the evening. Boys' golf played on Saturday mornings but girls' golf did not play on the weekends.

According to data provided by the school, all sports competed in post-season play, and individual athletes of both sexes were allowed to participate in post-season play. However, girls' tennis players interviewed by OCR asserted that tennis was not allowed to compete in post-season play. According to the AD, because of difficulty in the scheduling of matches for the tennis team, the team did not participate in the city conference for tennis, but rather a smaller conference, the Pioneer Conference. The AD agreed that the team did not play in the city conference tournament, but it did play in the Pioneer Conference tournament and the state sectionals.



The evidence indicated differences between boys' teams and girls' teams as follows: boys' teams played proportionately fewer allowable contests than girls' teams and the boys' soccer team had to wait to practice until the junior high team completed its practice; however, boys were provided slightly more opportunities to play basketball at prime time, and boys' golf was allowed to play on Saturday mornings. These disparities offset one another. Therefore, based on the foregoing, the evidence is insufficient to show that the District failed to provide equal athletic opportunities to students of both sexes at Crispus Attucks with respect to the scheduling of games and practice times.

### **Broad Ripple**

Girls' teams participated in 80% of the maximum allowable number of contests, while boys' teams competed in 75% of the maximum allowable number of contests.

During interviews with OCR, members of the girls' basketball team noted that they had a compressed schedule, where they would have multiple games in a row during the week, which did not allow them adequate study time. OCR's review of the boys' and girls' basketball schedules showed that although both teams had almost equal numbers of multiple-day games, boys' basketball had 11 or 57.9% of its 19 games at the optimal or prime time, on a Friday or Saturday, while the girls' basketball team had no or 0% of its 19 games on Friday or Saturday night. All other coaches and athletes felt that their game times and schedules were acceptable.

Coaches and athletes did not indicate to OCR any concerns about the number, time or length of practices.

According to data provided by the school, all sports competed in sectional play, and individual athletes of both sexes were allowed to participate in post-season play.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that while boys' teams played proportionately somewhat fewer allowable contests than girls' teams, boys were provided significantly more opportunities to play basketball at prime time. Therefore, based on the foregoing, the evidence shows that the District failed to provide equal athletic opportunities to girls at Broad Ripple with respect to the scheduling of games and practice times.

### **Marshall**

Marshall's girls' teams competed in 55% of allowable events, while its boys' teams competed in 60% of allowable events.

OCR received no concerns from coaches or athletes that the school discriminated against any particular team in scheduling games. However, the boys' basketball team played 6 or 30.0% of its 20 games at the optimal or prime time either Friday or Saturday nights. The girls' basketball team played 3 or 21.4% of its 14 games on Friday or Saturday night.

There were no complaints regarding the number, time, and length of practices or of the rotation of basketball schedules and was no difference between girls' and boys' opportunities to participate in pre-season and post-season events.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that girls' teams played proportionately slightly fewer allowable contests than boys' teams and that girls were provided slightly less opportunity to play basketball at prime time. These disparities were not sufficient to result in a denial of equal opportunity to girls in this area. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Marshall with respect to the scheduling of games and practice times.

### Northwest

Girls' teams participated in 72% of the maximum allowable number of contests, while boys' teams competed in 71% of the maximum allowable number of contests.

During interviews with OCR, members of the girls' basketball team described a compressed schedule, where they would have multiple games in a row during the week, which did not allow them adequate study time. OCR's review of the boys' and girls' basketball schedules showed that although both teams had almost equal numbers of multiple-day games, the evidence also showed that boys' basketball had 14 or 73.7% of its 19 games at the optimal or prime time on a Friday or Saturday night, while the girls' basketball team had only 3 or 15.0% of its 20 games on a Friday or Saturday night. All other coaches and athletes felt that their game times and schedules were acceptable.

In general, teams practice after school every day, other than days on which competitive events were scheduled. Although all coaches felt that their practice schedules were optimal, some girls reported to OCR that some boys' sports, including football and basketball, sometimes practiced on Saturdays. However, it is unclear whether this was an observation or a concern, and they also noted that boys' and girls' track teams sometimes practiced on Saturdays.

One girls' tennis player asserted to OCR that tennis was not allowed to compete in post season play. According to the AD, the team did not participate in the District's conference for tennis, but rather a smaller conference, the Pioneer conference. The AD agreed that the team did not play in the city conference tournament, but it did play in sectionals. There were no other concerns raised with regard to pre-season or post-season competition.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that girls' teams played proportionately slightly more allowable contests than boys' teams but that boys received significantly more opportunities than girls to play basketball in prime time. Therefore, based on the foregoing, the evidence

shows that the District failed to provide equal athletic opportunities to students of both sexes at Northwest with respect to the scheduling of games and practice times.

### **Shortridge**

Girls' teams participated in 59% of the maximum allowable number of contests, while boys' teams competed in 57% of the maximum allowable number of contests.

OCR's review of the boys' and girls' basketball schedules showed that boys' basketball had 6 or 33.3% of its 18 games at the optimal or prime time on a Friday or Saturday night while the girls' basketball team had 2 or 11.1% of its 18 games on either a Friday or Saturday night.

None of the coaches or athletes indicated a problem with the number, length, or time of practices.

No team participated in a pre-season scrimmage and all sports competed in post-season play.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that girls' teams played proportionately slightly more allowable contests than boys' teams, which is offset by boys' teams receiving slightly more opportunity than girls to play basketball in prime time. Therefore, based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Shortridge with respect to the scheduling of games and practice times.

### **Washington**

Girls' teams participated in 80% of the maximum allowable number of contests, while boys' teams competed in 75% of the maximum allowable number of contests.

OCR's review of the boys' and girls' basketball schedules showed that boys' basketball had 14 or 73.6% of its 19 games at the optimal or prime time on a Friday or Saturday night, while the girls' basketball team had 2 or 10.5% of its 19 games on a Friday or Saturday night.

None of the coaches or athletes mentioned concerns about number, length, or time of practices.

According to data provided by the school, all sports competed in post-season play, and individual athletes of both sexes were allowed to participate in post-season play.

The evidence did not indicate differences between boys' teams and girls' teams except in the following respects. The evidence established that while boys' teams had proportionately somewhat fewer allowable contests than girls' teams, boys had significantly more opportunities to play basketball in prime time than girls. Therefore, based on the foregoing, the evidence

shows that the District failed to provide equal athletic opportunities to girls at Washington with respect to the scheduling of games and practice times.

### **Conclusion**

Overall, OCR determined that the disparities identified with respect to the scheduling of games and practice times at Arsenal, Broad Ripple, Northwest, and Washington adversely affected girls to a greater degree than boys and were substantial enough to deny equal athletic opportunities to girls. OCR also determined that there is insufficient evidence to conclude that the District failed to provide equal athletic opportunities to students of both sexes at the remaining three high schools with respect to the scheduling of games and practice times.

### **Medical and Training Facilities and Services - 34 C.F.R. § 106.41(c)(8)**

In determining compliance in the provision of medical and training facilities and services, OCR considers the following five factors: (1) availability of medical personnel and assistance; (2) health, accident and injury insurance coverage; (3) availability and quality of weight and training facilities; (4) availability and quality of conditioning facilities; and (5) availability and qualifications of athletic trainers.

In conducting its review of this area, OCR examined weight and training facilities, interviewed the District AD and the AD of each high school, interviewed the District's Sports Medicine Coordinator, obtained information from coaches, and interviewed athletes from boys' and girls' teams.

Each high school has a certified medical trainer through Indiana University Health and one physician from Indiana University Health. According to the District, the trainers have set priorities based on several years of data of injury rates to determine what home contests should be attended if there is a conflict: (1) football, (2) basketball, (3) soccer, (4) wrestling, and (5) volleyball. The physicians attend all football games for the school they are assigned, and the trainers attend all home contests, with priority set based on the possibility of injury, as described above. Per the District's insurance arrangements, all student athletes who are injured during play or practice that require more comprehensive services than could be provided at the school would be treated at an Indiana University Health facility.

### **Arsenal**

The AD reported that the weight room is used by all athletes, on boys' and girls' teams, on a scheduled basis, with in-season teams getting preference as to times. There is also a full-time strength and conditioning coach that teaches during the day and works with athletes after school. The strength and conditioning coach has a specific schedule for in-season sports.

None of the students interviewed by OCR expressed any concerns about the school's training and medical facilities. Additionally, no coaches reported any concerns with the training or medical facilities.

The evidence did not indicate differences between boys' teams and girls' teams except in one respect – the physician attends football games based on the rate of possible injury. The evidence is insufficient to conclude on the basis of this disparity that the District failed on an overall basis to provide equal athletic opportunities to students of both sexes at Arsenal with respect to the provision of medical and training facilities and services.

### **Crispus Attucks**

According to the AD, the trainer leaves school when the last practice ends. Boys and girls testified that the trainer is readily available on a first come, first serve basis, regardless of team or gender. No team received priority use of the weight and conditioning facility, according to the athletes.

The evidence did not indicate differences between boys' teams and girls' teams. The evidence is insufficient to conclude that the District failed on an overall basis to provide equal athletic opportunities to students of both sexes at Crispus Attucks with respect to the provision of medical and training facilities and services.

### **Broad Ripple**

Athletes did not indicate any problems with regard to weight training and conditioning facilities that affected one gender over the other.

The evidence did not indicate differences between boys' teams and girls' teams except in one respect – the physician attends football games based on the rate of possible injury. The evidence is insufficient to conclude on the basis of this disparity that the District failed on an overall basis to provide equal athletic opportunities to students of both sexes at Broad Ripple with respect to the provision of medical and training facilities and services.

### **Marshall**

Coaches and athletes did not report any concerns with the trainer. None of the athletes interviewed by OCR expressed any concerns about the school's training and medical facilities. Additionally, no coaches reported any concerns with the training or medical facilities.

The evidence did not indicate differences between boys' teams and girls' teams. The evidence is insufficient to conclude that the District failed on an overall basis to provide equal athletic opportunities to students of both sexes at Marshall with respect to the provision of medical and training facilities and services.

### **Northwest**

The AD stated that the training room door is always open and getting taped and/or treated prior to a contest is first come, first serve, regardless of team or gender. No information was provided to indicate differences for boys and girls in the area of weight and conditioning facilities.

The evidence did not indicate differences between boys' teams and girls' teams except in one respect – the physician attends football games based on the rate of possible injury. The evidence is insufficient to conclude on the basis of this disparity that the District failed on an overall basis to provide equal athletic opportunities to students of both sexes at Northwest with respect to the provision of medical and training facilities and services.

### **Shortridge**

Shortridge lacks a training facility. Boys and girls alike had access to the weight room at the school.

The evidence did not indicate differences between boys' teams and girls' teams. The evidence is insufficient to conclude that the District failed on an overall basis to provide equal athletic opportunities to students of both sexes at Shortridge with respect to the provision of medical and training facilities and services.

### **Washington**

Boys and girls testified that the trainer was readily available on a first come, first serve basis, regardless of team or gender. No information indicated a difference in access to weight and conditioning facilities for boys and girls.

The evidence did not indicate differences between boys' teams and girls' teams. The evidence is insufficient to conclude that the District failed on an overall basis to provide equal athletic opportunities to students of both sexes at Washington with respect to the provision of medical and training facilities and services.

### **Conclusion**

Overall, OCR determined that there is insufficient evidence to conclude that the District failed to provide equal athletic opportunities to students of both sexes at the seven high schools with respect to the provision of medical and training facilities and services.

### **Support Services - 34 C.F.R. § 106.41(c)**

In assessing compliance in this area, OCR considered, among other factors, the equivalence for men and women teams regarding the amount of administrative, secretarial, and clerical assistance received, and the availability of office space, equipment and supplies, and other support services. The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of support services: (1) the amount of administrative assistance provided to boys' and girls' programs; and (2) the amount of secretarial and clerical assistance provided to boys' and girls' programs.

In conducting its review of this area, OCR interviewed the District AD and the AD of each high school, obtained information from coaches, and interviewed athletes from boys' and girls' teams.

#### **Arsenal**

The AD has an office, and there is a full-time secretary for the athletic department who handles scheduling, buses, typing, clerical work, bank deposits and confirming events. There is also a full time Assistant AD who also serves as the boys' basketball coach. In addition, boys' and girls' coaches perform such tasks on a comparable basis. The Assistant AD also has an individual office. According to the AD, all of the coaches have space but it may be shared space. The girls' cross country and the boys' track and field coaches reported not having offices.

OCR inspected the coaching offices and storage areas, and determined them to be of comparable size and quality.

Based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Arsenal with respect to the provision of support services.

#### **Crispus Attucks**

The Crispus Attucks AD informed OCR that he is the one who primarily schedules the contests and travel for each athletic team, and he coordinates ticket sales and concessions. The AD also assists each team in regard to its budget and supplies. According to the coaches, the AD provided this assistance to all girls' and boys' teams. Also, none of the coaches received clerical or secretarial assistance. No coach had an office strictly for athletic purposes.

Based on the foregoing, the evidence is insufficient to show that the District failed to provide equal athletic opportunities to students of both sexes at Crispus Attucks with respect to the provision of support services.

**Broad Ripple**

According to the AD, all athletic coaches have their own offices. OCR inspected the offices and found them to be of similar size and condition. According to the AD and coaches, none of the coaches have clerical, secretarial, or administrative staff. The AD and coaches informed OCR that the AD coordinates all teams' schedules, travel, ticket sales and concessions and assists each team in regard to its budget and supplies.

Based on the foregoing, the evidence is insufficient to show that the District failed to provide equal athletic opportunities to students of both sexes at Broad Ripple with respect to the provision of support services.

**Marshall**

The Marshall AD reported that coaches share one office, and do not have individual offices. The AD does have an office, and there is a secretary for the athletic department who handles scheduling, filing, inventory and information on coaches and officials. In addition, boys' and girls' coaches perform such tasks on a comparable basis.

OCR inspected the coaching offices and storage areas, and determined them to be of comparable size and quality. The girls' basketball coach reported not having an office; OCR did not obtain information from the boys' basketball coach, but there was no indication during the on-site visit that this coach has an office.

Based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Marshall with respect to the provision of support services.

**Northwest**

According to the AD, all athletic coaches have their own offices and storage areas for equipment and supplies. Some offices and storage areas, like volleyball and girls' track, were combined because they are coached by the same person. OCR inspected the offices and found them to be of similar size and condition. According to the AD and coaches, none of the coaches have clerical, secretarial, or administrative staff.

The AD and coaches informed OCR that the AD is primarily responsible for coordinating schedules, travel, ticket sales and concessions and also assists each team in regard to its budget and supplies. Based on information from coaches, boys' and girls' coaches spend a similar amount of time on clerical duties.



Based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Northwest with respect to the provision of support services.

### **Shortridge**

Coaches at Shortridge had access to two office areas; coaches are assigned to the office areas based on their gender. Each office area had a computer, dressing area, shower, and phone.

The AD and coaches informed OCR that the AD is primarily responsible for coordinating schedules, travel, ticket sales and concessions and also assists each team in regard to its budget and supplies. Based on information from coaches, boys' and girls' coaches spend a similar amount of time on clerical duties.

Based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Shortridge with respect to the provision of support services.

### **Washington**

All coaches had an office strictly for athletic purposes, or shared an office with another coach. No information provided to OCR indicated a pattern of provision of offices that disadvantaged coaches of students of one gender compared to coaches of students of the other.

The AD and coaches informed OCR that the AD is primarily responsible for coordinating schedules, travel, ticket sales and concessions and also assists each team in regard to its budget and supplies. Based on information from coaches, boys' and girls' coaches spend a similar amount of time on clerical duties.

Based on the foregoing, the evidence is insufficient to conclude that the District failed to provide equal athletic opportunities to students of both sexes at Washington with respect to the provision of support services.

### **Conclusion**

Overall, OCR determined that there is insufficient evidence to conclude that the District failed to provide equal athletic opportunities to students of both sexes at the seven high schools with respect to the provision of support services.

### **Overall Conclusion**

Based on the information gathered during the review, OCR determined that the District's interscholastic athletics program has not provided girls at Arsenal, Crispus Attucks, Broad

Ripple, Northwest, Shortridge and Washington an equal opportunity to participate in high school interscholastic athletics by effectively accommodating students' interests and abilities, as required by Title IX and its implementing regulation at 34 C.F.R. § 106.41(c)(1). OCR also determined that the District has not provided girls equal opportunity in interscholastic athletics with respect to the provision of equipment and supplies at Marshall and Washington, as required by Title IX and its implementing regulation at 34 C.F.R. § 106.41(c)(2), the provision of locker rooms and practice and competitive facilities at Arsenal, Broad Ripple, and Marshall, as required by Title IX and its implementing regulation at 34 C.F.R. § 106.41(c)(7), and the scheduling of games and practice times at Arsenal, Broad Ripple, Northwest, and Washington, as required by Title IX and its implementing regulation at 34 C.F.R. § 106.41(c)(3). The evidence did not support a conclusion of Title IX noncompliance at any of the high schools with athletics programs with respect to the provision of medical and training facilities and services and support services.

### **Agreement**

Following OCR's investigation, OCR discussed with the District the compliance issues identified in the investigation. On February 3, 2014, OCR received the enclosed Resolution Agreement. Pursuant to the enclosed Agreement, the District committed to take specific actions to ensure that it is providing an equal opportunity for boys and girls in interscholastic athletics.

According to the Agreement, the District will provide participation opportunities for girls and boys at six high schools (Arsenal, Crispus Attucks, Broad Ripple, Northwest, Shortridge and Washington) that effectively accommodate the athletic interests and abilities of both sexes at those high schools. In particular, the District will conduct a comprehensive assessment during the 2013-2014 school year to determine whether female students (who are the underrepresented sex in the District's athletics program) have unmet athletic interests and abilities. The assessment will include a survey, whose terms and methodology will be reviewed and approved by OCR, administered to all high school and eighth grade female students. The Agreement requires the District to complete the assessment within 90 days of OCR's approval.

If through the assessment, the District identifies a sport or sports in which there is sufficient but unmet interest and (if applicable) ability of female students to participate at the interscholastic level at a particular high school, the District will add athletics opportunities (including new sports or new levels of existing sports by the next competitive season) at the high school(s) until such time as either (1) the high school is fully and effectively accommodating the expressed interests and abilities of female students (*i.e.*, there remains no unmet interest and ability); or (2) the participation rate for female students in the high school's interscholastic athletics program is substantially proportionate to their rate of enrollment at the high school. For any sport that is not currently offered by the District and where there is a minimum number of female students to field a team who have sufficient interest and ability in that sport, as applicable, but where the District determines that there is not sufficient competition within the normal competitive region, the District will take ongoing steps to develop students' interest and ability. The District will also

develop during the 2013-2014 school year a process or procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at each of the District's high schools.

In addition, during the 2013-2014 school year, the District will develop a plan to ensure that it provides equal athletic opportunities at Arsenal, Broad Ripple, and Marshall High Schools for members of both sexes in the provision of locker rooms, practice and competitive facilities, will develop a plan to ensure that it provides equal athletic opportunities at Marshall and Washington High Schools for members of both sexes in the provision of equipment and supplies, and will develop a plan to ensure that it provides equal athletic opportunities at Arsenal, Broad Ripple, Northwest, and Washington High Schools for members of both sexes in the scheduling of games and practice times. The District will immediately commence implementation of the plans to the extent practicable for spring 2014 sports, with final implementation by no later than the 2014-2015 school year.

Finally, the District will create during the 2013-2014 school year a comprehensive policy, subject to OCR's review and approval prior to implementation, to regulate booster club funding and any other private donations flowing into the athletic programs at each high school to ensure that if booster clubs or other outside sources provide funding that results in disparities in benefits and services favoring athletes of one sex over the other sex, then the District will take action at the high school to ensure that the benefits and services are equivalent for both sexes.

Based on the commitments the District has made in the Agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review.

The District has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner in accordance with the reporting requirements of the Agreement. While the signed Agreement was provided to OCR on February 3, 2014, the District has already provided, for OCR's review and approval, a draft survey of the athletic interests and abilities of its high school and eighth grade female students, a description of District's planned methodology to conduct the survey, a draft notice on how to request the addition of new sports at each of the District's high schools, and a draft policy relating to the support provided to the District's athletics program by booster clubs. OCR will promptly review this information and advise the District of whether the survey has been approved, so that the District may proceed to administer the survey and complete its assessment by the end of this school year.

The Agreement requires that, within 90 days of OCR's approval, the District must submit a detailed report to OCR of its assessment of athletic interest and (if applicable) ability to play sports. If the District is obligated to offer additional athletic opportunities as a result of its assessment, the District must provide documentation by May 1 of each year during the monitoring of the Agreement that these opportunities have been created. In addition, OCR notes that the Agreement requires the District to provide to OCR by February 14, 2014, information regarding its plans to upgrade facilities, improve equipment and supplies, and ensure that it

provides equal athletic opportunities in the scheduling of games and practice times. On February 21, 2014, OCR agreed to the District's request for an extension until February 28, 2014 to provide this information. OCR looks forward to receiving this monitoring report as well as the monitoring report due on May 1, 2014. This report will include general information about the athletics programs at each of the District's high schools as well as information about the status of the District's implementation of its plans for improving the facilities, equipment and supplies, and scheduling of games and practices times for girls' teams at the identified high schools, beginning in the spring 2014.

OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Title IX. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR's determination in an individual OCR compliance review. It 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.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

OCR greatly appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. We particularly appreciate the cooperation of Mr. Victor Bush during the investigation and Ms. Roberta Recker, counsel, during the settlement discussions. If you have any questions, please contact Jeffrey Turnbull, Team Leader, at 312-730-1611 or by e-mail at [Jeffrey.Turnbull@ed.gov](mailto:Jeffrey.Turnbull@ed.gov).

Sincerely,

Adele Rapport  
Acting Director

cc: Ms. Roberta Recker

Enclosure