



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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February 14, 2013

Dr. David B. Smith
Superintendent
Evansville-Vanderburgh School Corporation
951 Walnut Street
Evansville, IN 47713

OCR Compliance Review # 05-11-5002

Dear Dr. Smith:

This is to advise you of the resolution of the above-referenced compliance review that was initiated at Evansville-Vanderburgh School Corporation (Corporation) by the U.S. Department of Education (Department), Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department, such as the Corporation. OCR's review addressed the issues of whether the Corporation is effectively accommodating the athletic interests and abilities of members of both sexes with respect to the opportunity to participate in high school interscholastic athletics, and whether the Corporation provides males and females equal opportunity in the provision of locker rooms, practice, and competitive facilities.

Background

On June 30, 2011, OCR notified the Corporation that it had been selected for a compliance review under Title IX. As part of the review, OCR obtained data from the Corporation for the 2010-2011 school year, toured the Corporation's facilities and conducted interviews with Corporation staff during the 2011-12 school year. Prior to OCR's completion of its investigation of the issues being addressed by the review, the Corporation requested to resolve the compliance review. Subsequent discussions between OCR and the Corporation resulted in the Corporation's execution of the enclosed settlement agreement. The following is a statement of the applicable regulations and legal standards and a summary of the information obtained to date in OCR's investigation.

Legal Standards

The provision of equal opportunities in athletics programs is specifically addressed at 34 C.F.R. § 106.41. The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states 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 intercollegiate, interscholastic, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.” 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.

The Corporation

The Corporation is a public school district located in Evansville, Indiana. The Corporation offers interscholastic athletic opportunities at five high schools. The Corporation offers interscholastic athletic opportunities to boys at each of its high schools in the sports of baseball, basketball, cross-country, football, golf, soccer, swimming, tennis, track, and wrestling. The Corporation offers interscholastic athletic opportunities to girls at each of its high schools in the sports of basketball, cross-country, golf, soccer, softball, swimming, tennis, track, and volleyball.

The Corporation's high schools are members of the Southern Indiana Athletic Conference (SIAC) and the Indiana High School Athletics Association (IHSAA). The Corporation offers every sport at a varsity level for boys for which there is an IHSAA championship tournament and all but one (gymnastics) of the sports at a varsity level for girls for which there is an IHSAA championship tournament. Although each of the Corporation's high schools offers the same sports for boys and girls, the levels (varsity, junior varsity, etc.) offered within each sport differ from school to school.

Equal Athletic Opportunities

The Title IX provision of equal opportunities with respect to the participation in interscholastic athletics is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The implementing regulation states that in determining whether equal

opportunities are provided for males and females, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity.

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 determining compliance in this area, OCR uses the three-part test first established in the Policy Interpretation and refers to other policy guidance issued in 1996 and 2010. 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.

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 male and female students 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.

Part I: Participation in Proportion to Enrollment

According to data provided by the Corporation, during the 2010-11 school year, girls comprised 3,335, or 50.1%, of the Corporation's 6,660 students but comprised only 787, or 36.4%, of the Corporation's 2,161 interscholastic athletes. The difference between the enrollment and interscholastic athletic participation rates of girls corporation-wide was 13.7 percentage points. OCR determined that this disparity represented nearly 600 interscholastic athletic participation opportunities for girls.

The information provided by the Corporation also indicated that girls were underrepresented in the interscholastic athletic program at all five of the Corporation's high schools. The 2010-11 enrollment and interscholastic athletic participation rates of girls at each of the five Corporation high schools, and the number of interscholastic athletic participation opportunities represented by any disparities in these percentages are reflected in the following table:

School	Female % of Total Population	Female % of Athletes	% Point Difference	Athletic Participation Opportunities Represented by Disparity
Bosse High School	50.3%	36.8%	13.5% points	71
Central High School	48.4%	33.1%	15.3% points	122
Harrison High School	51.3%	34.0%	17.3% points	170
North High School	49.7%	39.2%	10.5% points	100
Reitz High School	50.8%	38.3%	12.5% points	134
Total Corporation	50.1%	36.4%	13.7% points	592

Accordingly, OCR concluded that the Corporation was not providing participation opportunities to male and female student-athletes in numbers substantially proportionate to their respective enrollments. Girls are underrepresented in the Corporation’s high school athletics program.

Part II: History of Program Expansion

OCR next analyzed whether the Corporation demonstrated a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the under-represented sex. This part of the test looks at a school district’s past and continuing efforts to provide non-discriminatory participation opportunities through program expansion. OCR first considers a district’s historical record of adding interscholastic teams for the under-represented sex. If a district can demonstrate a consistent effort to add interscholastic teams for the underrepresented sex over time, OCR then looks at other factors that demonstrate a district’s commitment to providing equal athletic opportunities to both sexes, for example, its implementation of a nondiscriminatory policy or procedure for requesting the addition of sports and the effective communication of the policy or procedure to students.

The Corporation reported that it established the majority of its current girls’ interscholastic athletic teams between 1973 and 1990. In 1994, the Corporation added soccer for girls and boys at each high school, and in 2000 it added swimming for girls and boys at each high school. The Corporation did not explain what prompted its decisions to add these sports at those times. However, the Corporation agreed that it has not added any sports since that

time. The Corporation did not provide any historical data regarding participation in athletics by girls. Additionally, according to information provided by the Corporation, in 1985 the Corporation eliminated girls' gymnastics as a varsity sport at all five of its high schools. The Corporation reported that this decision was made due to lack of interest. The Corporation reported that there is currently no gymnastics club at any Corporation high school and asserted that there is no current interest in the sport of gymnastics amongst girls at any Corporation high school.

The Corporation did not identify any current plan to add a girls' interscholastic athletic team in the future or to expand any of its existing girls' interscholastic athletic teams, though it expressed a willingness to do so if the opportunity presented itself. According to the Chief of Staff/Athletic Director of the Corporation (AD), boys and girls from Corporation high schools have expressed interest in interscholastic bowling and lacrosse. However, he explained the Corporation's investigation into the development of an interscholastic bowling program was discontinued when local bowling alleys advised the Corporation that they would not agree to stop selling alcohol during high school meets, tournaments, and events. As for lacrosse, the AD said he had no information regarding actions taken by the Corporation in response to requests for the sport, or investigation by the Corporation of the sport's viability as a club and/or interscholastic offering for girls at any of the Corporation's high schools.

Based on this information, and despite the addition of girls' sports years ago, OCR concluded that the District could not demonstrate both a "history" and "continuing practice" of program expansion for girls. While there were periods of time in the District's history where it increased participation opportunities for girls, there were significant periods of time – including the past decade – when little or no expansion occurred. Accordingly, OCR determined that the District did not meet part two of the Three Part Test.

Part III: Interests and Abilities

Even when a school district cannot demonstrate compliance with either parts one or two of the three-part test, OCR may find the district in compliance through part three of the three part test if it can be shown that the underrepresented sex's interests and abilities are met by the current athletics program. To make this determination, OCR considers an institution's assessment of any unmet interest and ability in its athletics program. OCR also considers other indicators of possible interest and ability such as developing sports on a regional or national level, as well as local youth and feeder programs in the areas from which a district draws its students.

The Corporation asserted to OCR that the interests and abilities of the underrepresented sex have been fully and effectively accommodated by the present program. However, the

Corporation agreed that it has not undertaken a district wide survey or assessment of the athletic interest and abilities of any of its students. As stated above, the AD reported receiving indications from Corporation students of interest in bowling and lacrosse as interscholastic sports at the Corporation's high schools and the Corporation previously offered gymnastics as an interscholastic sport for girls, before eliminating the sport in the mid-1980s. Gymnastics is the only sport for girls that is sanctioned by the IHSAA but not offered by the Corporation. Although the Corporation does not have an established policy or procedure whereby students, parents or others may request additional interscholastic sports teams, or additional levels on an existing interscholastic sports team, the Corporation stated that it holds open school board meetings, which provide a forum for parents, students, and/or Corporation staff to request additional interscholastic sports teams, or additional levels on an existing interscholastic sports team.

Before OCR completed its investigation and determined whether the Corporation met the third part of the three-part test, the Corporation expressed an interest in voluntarily ensuring that girls had an equal opportunity to compete.

Comparable Athletic Benefits:
Locker Rooms, Practice and Competitive Facilities

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. In considering this area in the District's athletics program, OCR conducts an overall review of the boys' and girls' teams. OCR compares the locker rooms, practice and competitive facilities provided to the teams in the girls' programs to the locker rooms, practice and competitive facilities provided to the teams in the boys' programs. When disparities are identified between the girls' and the boys' teams, *e.g.*, if a boys' team received a superior benefit in some way, OCR considers whether the benefit provided to the boys' program was offset by an unmatched benefit to any of the teams in the girls' program. In making this "program-wide" comparison, and before OCR concludes that a benefit to one of the teams in the girls' program offsets a benefit provided to one of the teams in the boys' program, OCR considers whether the offsetting benefits were equivalent or equal in effect. OCR only finds 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 identifies disparities, and if it finds no evidence of offsetting, we consider whether the differences between the benefits provided to the boys' and girls' programs are negligible. Where the disparities are not negligible, OCR examines whether they were the

result of legitimate, nondiscriminatory factors. If OCR finds no legitimate, nondiscriminatory reasons for the disparities, OCR then determines whether the identified disparities resulted in the denial of equal opportunity to male or female athletes, 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 is not to ensure identical benefits, opportunities, or treatment, but rather, to ensure that, overall, the athletics program provided equivalent benefits to boys and girls.

In determining compliance in the provision of locker rooms, practice and competitive facilities, OCR specifically assesses the factors outlined in the Policy Interpretation: the quality and availability of locker rooms and the quality, availability, exclusivity, maintenance and preparation of practice and competitive facilities.

OCR reviewed at all high schools the quality and availability of the facilities provided for practice and competitive events; the exclusivity of use of facilities provided for practice and competitive events; the availability of locker rooms; the quality of locker rooms; the maintenance of practice and competitive facilities; and the preparation of facilities for practice and competitive events. OCR toured all of the locker rooms, and many of the practice and competitive facilities used by athletes at the Corporation's high schools, both on-campus and off-campus. OCR also interviewed the AD about the current state of the Corporation's locker rooms, practice and competitive facilities and the Corporation's plans to renovate its current facilities.

During its visit to the Corporation, OCR visually inspected the facilities and discussed availability, exclusivity, maintenance, and preparation of the facilities with the AD and the athletic director of each respective high school. When OCR visited the Corporation, new athletic facilities were being constructed and other facilities were being renovated (or there were plans for renovations). The Corporation subsequently completed construction of a new North High School (North II) that replaced an older high school of the same name (North I), a facility that OCR had toured. During its onsite investigation OCR had visited North I and the construction site for North II, and had observed that the North II was to have new athletic facilities for boys and girls. In addition, the Corporation was renovating the baseball field at Reitz High School and planned construction of a locker facility at Harrison High School to benefit boys and girls. However, before OCR could complete its investigation and determine whether the Corporation was providing equal opportunity in the provision of locker rooms, practice and competitive facilities, the Corporation expressed an interest in voluntarily resolving the review.

As discussed above, prior to the completion of OCR's investigation, the Corporation requested to resolve the review with a voluntary Resolution Agreement. When fully implemented, the Agreement submitted by the Corporation will resolve the issues covered by the review. The provisions of the Agreement are aligned with those issues and the information obtained during OCR's investigation and are consistent with the applicable regulations.

With respect to increasing participation opportunities for female athletes, under the terms of the enclosed Resolution Agreement, if it cannot demonstrate compliance with the three-part test pertaining to the provision of participation opportunities, then the Corporation will conduct a comprehensive assessment by April 26, 2013 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. By this same date, the District is required to report to OCR on its assessment. OCR will notify the District of any deficiencies with respect to the District's implementation of the Agreement requirements relating to the assessment and work with the District to address these deficiencies or if it concludes, through its assessment, that it is fully and effectively accommodating the athletic interests of its female high school students.

Otherwise, the District will be obligated to offer additional athletic opportunities to female students. These steps are to be taken by the next competitive season for the particular sport during the 2013-2014 school year. Such additional athletic opportunities may include creating new sports teams for girls, adding levels to existing teams, or increasing the squad size of existing teams to a reasonable number given coaching and other support available to that sport. 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, 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. These steps may include establishing club sports, exploring the feasibility of establishing competition in the District's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available. The District will also revise and better publicize its 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 the District's high school. The District will provide notice each year to students, coaches, and other District staff of all of the sports offered at each high school.

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In addition, the Corporation will by April 26, 2013, conduct an assessment of its locker rooms, practice and competitive facilities, and report to OCR any necessary upgrades and improvements it plans by the end of the 2012-2013 academic year to ensure it provides equal opportunities to boys and girls in the provision of locker rooms, practice and competitive facilities at each Corporation high school.

OCR will monitor the Corporation's implementation of the Agreement. We look forward to receiving the Corporation's first monitoring report, which is due by April 26, 2013.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that this letter and the enclosed agreement cover only the issues investigated as part of this compliance review and should not be construed to address any other Title IX issues not investigated at this time. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. They are not formal statements 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.

OCR wishes to thank you and your staff for the cooperation extended to OCR during the course of this review. If you or your staff members have any questions regarding this matter, please do not hesitate to contact me or Ann Cook-Graver, of my staff at 312-730-1560.

Sincerely,

/s/

Adele Rapport
Acting Director

Enclosure