

Mr. Matthew Underwood, Superintendent  
Stephenville Independent School District  
2655 West Overhill Drive  
Stephenville, TX 76401

RE: OCR Complaint No. 06-14-1150

Dear Mr. Underwood:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, regarding the above-referenced complaint filed against the Stephenville Independent School District (SISD or District), Stephenville, Texas. The complainant alleged that the SISD discriminated against female students at Stephenville High School (SHS) on the basis of sex and retaliated against the complainant's XXXX. Specifically, the complainant alleged:

1. The SISD discriminates against female athletes at SHS in the following ways:
  - a. the selection of interscholastic sports does not effectively accommodate the interests and abilities of members of both sexes to the extent necessary to provide equal athletic opportunity;
  - b. female athletes have athletic period during the day and male athletes have athletic period at the beginning or end of the day;
  - c. female athletes have early game times and male athletes have late game times;
  - d. female athletes travel by school bus and do not receive pre-and post-game meals, while male athletes travel by charter bus and receive both pre- and post-game meals;
  - e. the SISD restricts female athletes' opportunity to receive coaching and discriminates against female athletes through the assignment and compensation of coaches;
  - f. the district uses a city-owned off-campus softball field that lacks several amenities offered at the SISD-owned baseball field, which is adjacent to SHS;
  - g. the athletic programs and tickets for girls' teams are of lower quality than the athletic programs and tickets for boys' teams;
  - h. the coaches create highlight videos for male athletes and email them to all Division I, I-AA and II schools in Texas and surrounding states and send the male athletes' transcripts, scores and measurements to college coaches, but do not provide similar benefits to female SHS athletes; and
  
2. The SISD retaliated against the complainant's XXXX for his complaints of sex discrimination when (a) XXXX SISD employees X---phrase redacted---X team and (b) the SISD failed to respond to complaints that his X---phrase redacted---X bullied and harassed by other students because of his complaints of discrimination.

OCR is responsible for determining whether organizations that receive or benefit from federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. In addition, the Title IX implementing regulation at 34 C.F.R. § 106.71 also prohibits retaliation. OCR has determined that the SISD is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to process this complaint for resolution under Title IX.

### **Issues Investigated**

In a letter dated February 13, 2014, OCR notified the complainant and the SISD that it was opening this complaint for investigation and would be investigating the following issues:

1. Whether the SISD discriminates against female SHS student athletes on the basis of sex by failing to provide them equal athletic opportunity with respect to: (a) the accommodation of athletic interests and abilities; (b) the scheduling of games and practice time; (c) travel and per diem allowance; (d) opportunity to receive coaching and assignment and compensation of coaches; (e) provision of locker rooms, practice and competitive facilities; and (f) publicity, in violation of Title IX at 34 C.F.R. § 106.41(c);
2. Whether the SISD discriminated against female SHS student athletes on the basis of sex by treating them differently than one or more similarly situated male SHS student athletes in providing college scholarship assistance, in violation of Title IX at 34 C.F.R. § 106.31; and
3. Whether the SISD retaliated against the complainant's XXXX when: (a) XXXX SISD employees X---phrase redacted---X from a team<sup>1</sup> and (b) the SISD failed to respond to complaints that his XXXX bullied and harassed by other students because he complained of sex discrimination in athletics, in violation of Title IX at 34 C.F.R. §106.71.

OCR's investigation of this complaint included a careful review of information gathered through written documentation provided by the complainant and the SISD, as well as interviews conducted with SISD representatives and the complainant. OCR also conducted an onsite visit May 13-15, 2014. After a careful review of all information obtained, OCR has determined there is sufficient evidence to support a finding of noncompliance with Title IX with respect to Issue 1

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<sup>1</sup> On March 3, 2014, OCR administratively closed issue 3 with regard to the first alleged adverse action because the SISD informed OCR that the complainant had filed this allegation in a Federal lawsuit, XXXX v. *Stephenville Independent School District*, XXXX (X.D. Texas), and in an XXXX, order the U.S. District Court for the XXXX District of Texas dismissed the allegation with prejudice pursuant to Federal Rule of Civil Procedures 12(b)(6). The complainant appealed OCR's administrative closure to the OCR Dallas Regional Director and on XXXX, 2014, the appeal was denied.

Item (a). However, OCR has determined there is insufficient evidence to support a finding of noncompliance with respect to Issue 1 Items (b), (c), (d), (e) and (f), and Issues 2 and 3. An analysis of the information obtained by OCR in its investigation and its findings are detailed by issue below.

### **Issue 1**

Whether the SISD discriminates against female Stephenville High School (SHS) student athletes on the basis of sex by failing to provide them equal athletic opportunity with respect to: (a) the accommodation of athletic interests and abilities; (b) the scheduling of games and practice time; (c) travel and per diem allowance; (d) opportunity to receive coaching and assignment and compensation of coaches; (e) provision of locker rooms, practice and competitive facilities; and (f) publicity, in violation of Title IX at 34 C.F.R. § 106.41(c).

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states, in relevant part, that “[n]o 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.” The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), states in pertinent part: “A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes.” Further clarification of the Title IX implementing regulations is provided in the Intercollegiate Athletics Policy Interpretation (Policy Interpretation) issued December 11, 1979 [44 Fed. Reg. 71413 et seq. (1979)]. Both the Title IX implementing regulations and the Policy Interpretation list ten factors that OCR may investigate in assessing a recipient’s compliance with Title IX. These ten factors, in turn, have been translated into thirteen “program components” as set forth in OCR’s Title IX Athletics Investigator’s Manual (Title IX Manual).

The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), specifically requires a recipient to provide equal athletic opportunity for members of both sexes; 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)(4), in the provision of travel and per diem allowance; at 34 C.F.R. § 106.41(c)(5), in the opportunity to receive coaching and academic tutoring; at 34 C.F.R. § 106.41(c)(6), in the assignment and compensation of coaches and tutors; 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)(10), in the provision of publicity. The Policy Interpretation identifies the provision of support services as an additional program component to be assessed by OCR in determining whether a recipient is providing equal athletic opportunity to members of both sexes.

When investigating athletics program components, OCR examines whether the availability and quality of benefits, opportunities, and treatment provided are equivalent (equal or equal in effect) for members of both sexes. OCR determines whether any disparities are the result of nondiscriminatory factors or whether these disparities resulted in the denial of equal opportunity

to male or female athletes, either because the disparities collectively are of a substantial or unjustified nature, or because the disparities in individual program areas are substantial enough by themselves to deny equality of athletic opportunity. OCR will analyze each relevant program component below.

a. Accommodation of Athletic Interests and Abilities

In assessing whether the athletic 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>2</sup> 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. 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 that 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.

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

The Stephenville High School (SHS) total enrollment for the 2013-2014 school year was 974 students (483 female students and 491 male students); fifty percent were female and fifty percent were male. The SHS provides eighteen sports in its athletic programs, nine for girls and nine for boys. The SISD reported its participation data for each sport and provided OCR with copies of its University Interscholastic League (UIL) varsity team eligibility forms for each sport.

During the 2013-2014 school year, there were 714 athletic opportunities at SHS. The total number of female athletic opportunities at SHS was 269, or 38%. The total number of male athletic opportunities at SHS was 445, or 62%. During the 2013-2014 school year, the athletic participation was not substantially proportionate to the enrollment, as the proportion of male athletic participation opportunities was 12% *above* the proportion of male enrollment, while the proportion of female athletic participation opportunities was 12% *below* the proportion of female enrollment. Therefore, OCR found that the District had not effectively accommodated the interests and abilities of female athletes based upon the first prong of the three-part test.

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<sup>2</sup> <http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>;  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.html>

Accordingly, OCR proceeded to examine whether there is a showing by the institution of a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex.

With regard to part two, OCR assesses whether the school's past actions have expanded participation opportunities for the underrepresented sex in a manner that 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 number 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.

The District has not added a sport for the underrepresented sex since 2000, when girls' soccer was added. The SHS does not sponsor any club or intramural sports; however, the District acknowledged that there are club and intramural teams in the Stephenville, Texas, area that are not affiliated with the SHS or District. The SHS X---phrase redacted---X, coaches and athletes informed OCR that the District had not eliminated any sports, and that they were not aware of any unsuccessful attempts to add a sport. Both the X---phrase redacted---X informed OCR that there was no written policy concerning criteria for adding a sport to the athletic program. Therefore, OCR found that the District had not shown a history and continuing practice of program expansion that has been demonstrably responsive to the developing interests and abilities of the underrepresented sex.

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 athletic interests and abilities of the underrepresented sex. OCR evaluates a broad range of indicators including whether a school uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students; whether a viable team for the underrepresented sex recently was eliminated; multiple indicators of interest; multiple indicators of ability; and the frequency of conducting assessments. If the school has recently eliminated a viable team from the interscholastic program, then OCR will find that there is sufficient interest, ability, and available competition to sustain an interscholastic team in that sport unless there is strong evidence that interest, ability, or available competition no longer exists.

The SISD informed OCR that it had conducted surveys of its students, parents, and other districts to determine athletic interest and provided OCR with a copy of the surveys. The SISD surveyed parents of pre-K through junior high school students in February 2014. In the survey, the SISD asked, “Please comment about what ideas/suggestions you may have to help improve our school.” The parent survey did not specifically reference athletics but received one athletic-related response, which stated, “They could have soccer to play.”

Similarly, in February 2014, the SISD surveyed students in grades 7-12. The student survey did not specifically ask questions about athletic participation or the athletics program; however, the survey included an open-ended question, which asked, “Are there any other programs or activities you would like to see offered on your campus? Examples might include organizations/clubs, subject offerings, extracurricular activities, or sports.” The SISD provided OCR with copies of the responses it received.

While the survey asked for the responding student’s gender, the survey responses provided to OCR were not disaggregated by gender or grade. In the survey responses students indicated an interest in the following sports: soccer, softball, swimming, golf, tennis, boxing, lacrosse, baseball, wrestling, equestrian, cricket, archery, rugby, rodeo, badminton gymnastics, hockey, and boys’ volleyball. In addition, several responses simply stated a need for more athletic opportunities without referencing a specific sport. Neither the X---phrase redacted---X informed OCR that they followed up on the survey responses concerning athletic interest. The XXXX XXXX informed OCR that the “administration” discussed the results of the survey but did not indicate whether he was involved in the discussions or what the discussions involved, acknowledging that he had limited knowledge of the District’s response to the survey results. In addition, the SISD does not have any specific policy or procedure concerning how it gauges students’ interests and abilities in extra-curricular sports or how it responds to the results of the more general survey it used.

In June of 2013, the SISD contacted other school districts within its geographic region with an online survey, stating, “Stephenville ISD is in the process of evaluating our junior high athletic program. We ask that you complete a short survey regarding the junior high/middle school level athletic program in your school district.” The survey asked general questions about the school’s classification, which sports are provided, how many athletes participate, whether the school cuts athletes, the farthest distance the school travels, whether the students receive an athletic period, etc., and specific questions about volleyball, basketball, and football. The SISD provided OCR with copies of the responses it received from the districts it surveyed. While the survey results were not disaggregated by school/district, the survey results indicated that one school/district offered wrestling, one offered gymnastics, and two offered swimming.

OCR interviewed male and female SHS athletes from every team concerning the District’s accommodation of athletic interests and abilities. None of the female athletes indicated that there was a sport that they were interested in but that was not being provided by the SISD; however, several male athletes indicated an interest in a swimming team. OCR did not interview female

students who are not participating in sports at SHS but who may be interested in sports not currently offered by the District.

The UIL sanctions the following sports: baseball, basketball, cross country, football, golf, softball, swimming and diving, team tennis, tennis, track and field, volleyball, and wrestling. The SISD offers all UIL sanctioned sports, with the exception of swimming and diving, team tennis, and wrestling. The SISD's survey of other districts indicates that competition is available in three sports (wrestling, gymnastics, and swimming). Further, the Stephenville Parks and Recreation Department offers a youth swim team and a local Stephenville, Texas, gym sponsors an all-around gymnastics team.

While interviews with student athletes did not reveal any particular sport(s) in which female students have an unmet interest, OCR found that the SISD has not adequately assessed whether the interests and abilities of SHS students were being met. For example, the SISD identified sports offered at neighboring school districts but provided no information to indicate that the District had considered offering such sports. The SISD provided OCR with general surveys that indicated some unmet interest but no information to indicate the District seriously considered that information, assessed the abilities of those responding with interest, or determined whether additional sports should be added to the athletic program.

Based upon the above information, OCR determined that the SISD has not assessed whether the current program effectively accommodates the interests and abilities of the underrepresented sex and, therefore, OCR found there is sufficient evidence to establish that the SISD has failed to provide equal athletic opportunities to female students with regard to this component.

b. Scheduling of Games and Practice Time

The Policy Interpretation lists five factors to be assessed in determining compliance with the scheduling of games and practice time component: (1) number of competitive events per sport; (2) number and length of practice opportunities; (3) time of day competitive events are scheduled; (4) time of day practice opportunities are scheduled; and (5) opportunities to engage in available pre-season and post-season competition. The season of sport and the length of season may also be a factor to be assessed depending upon the specific fact situation.

The cross country, track, tennis, golf, and powerlifting competition schedules are the same for both male and female athletes. The coaches and students informed OCR that, for all sports, post-season competition is by qualification. Therefore, the number of post-season competitions depended on how far the team advanced.

None of the female or male athletes expressed concern regarding their sport's season. All of the student athletes indicated there was sufficient opportunity for spectators to attend their events. However, the golf team noted that their competitions occur during the day and generally only parents are able to attend.

OCR reviewed the five elements of this component to determine whether any differences constitute a disparity. With regard to the number of competitive events per sport, OCR found that male and female athletes were provided comparable opportunities to participate. Varsity boys' and girls' basketball teams had the same number of regular season games and pre-season scrimmages; however, the boys' basketball team had two more tournaments than the girls' basketball team. The varsity girls' soccer team had two more regular season games/tournaments than the boys' soccer team; while the junior-varsity boys' soccer team had two more games and two more tournaments than the girls' junior-varsity soccer team. The softball team had fewer games than the baseball team; however the volleyball team had significantly more games than the football team.

OCR next examined the number and length of practice times. Three girls' sports (basketball, volleyball, and soccer) have athletic periods, while only two boys' sports (football and basketball) have an athletic period. Nearly all of the sports teams practiced after school for a similar amount of time.

OCR next reviewed the opportunities to engage in pre- and post-season competition. The coaches and athletes informed OCR that, for all teams, post-season competition is by qualification. Thus, each team's participation in post-season competition was dependent on their qualification and advancement. For pre-season competition, the girls' and boys' soccer teams, girls' and boys' varsity basketball teams, volleyball team, and football team each participated in two pre-season games. The baseball team participated in one more pre-season scrimmage than the softball team.

OCR's analysis revealed that there were some differences between the boys' and girls' teams with regard to the scheduling of competitions and practices, but OCR did not find that the differences resulted in a disparity or significant disparity, and thus did not find by a preponderance of the evidence that female athletes were denied equal opportunity to participate with regard to the scheduling of games and practice time.

c. Travel and Per Diem Allowance

The Policy Interpretation lists five factors to be assessed in determining compliance with this component: (1) modes of transportation; (2) housing furnished during travel; (3) length of stay before and after competitive events; (4) per diem allowances; and (5) dining arrangements.

The SISD informed OCR that it considers the following factors in determining the mode of transportation for SHS athletes to attend away events: (1) number of students traveling for a sport; (2) number of buses needed to transport students to an event and the time needed to arrive at the event timely compared to the number of buses not being used for regular school-route transportation; (3) estimated travel time; (4) distance in mileage to event; and (5) state playoff games/meets. If the number of students traveling to an event is fewer than 12 and there are 2 coaches attending, the District's SUV may be scheduled. If the number of students traveling to the event is fewer than 100, the District's bus transportation is used unless the travel time has a



probability of exceeding three hours, the distance will exceed 150 miles, or the number of buses needed for the event exceeds the number available due to regular transportation routes. If the number of buses available is inadequate because of regular bus transportation routes, the SISD will use and pay for charter buses.

OCR interviews with student athletes and surveys of coaches confirmed the above-referenced policy. Further, neither student athletes nor coaches expressed concern regarding the transportation provided to their teams. Both male and female athletes, and coaches of male and female sports, confirmed to OCR that they have stayed overnight when a tournament lasts multiple days or when the distance to the event is far. Athletes and coaches indicated that they stay at comparable hotels (e.g., Hampton Inn, Holiday Inn Express, and Holiday Inn), with three to four athletes to a room.

The SISD informed OCR that all students are provided \$7 per meal for extra and co-curricular activities, including athletics. Male and female student athletes and coaches confirmed that the students are provided \$7 per meal. Athletes informed OCR that they are generally given the money, eat at a restaurant together, and pay separately; however, some athletes (boys' soccer, girls' soccer, boys'/girls' powerlifting, boys'/girls' golf, and boys'/girls' cross country) informed OCR that they eat as a group and the coaches pay. Both male and female athletes informed OCR that they receive at least one meal when off campus for an athletic event. None of the athletes indicated any differences with respect to what male and female athletes are provided in the context of per diem or dining arrangements.

OCR's analysis revealed that there were some limited differences between boys' and girls' teams with regard to the amount of time that teams arrive in advance of competition, but OCR did not find that the differences resulted in a disparity or significant disparity. OCR did not find any differences with regard to the per diem, dining arrangements, hotel accommodations, or mode of transportation made available to boys' and girls' teams. Thus OCR could not conclude by a preponderance of the evidence that these differences were disparities that resulted in inequities between male and female athletes.

d. Opportunity to Receive Coaching and Assignment and Compensation of Coaches

The Policy Interpretation lists three factors to be assessed in determining compliance with the opportunity to receive coaching component: (1) relative availability of full-time coaches; (2) relative availability of part-time and assistant coaches; and (3) relative availability of graduate assistants. The Policy Interpretation lists two factors to be assessed in determining compliance with the assignment of coaches component: (1) training, experience, and other professional qualifications of coaches; and (2) professional standing of coaches. The Policy Interpretation lists seven factors to be assessed in determining compliance with the compensation of coaches component: (1) rate of compensation (per sport, per season); (2) duration of contracts; (3) conditions relating to contract renewal; (4) experience; (5) nature of coaching duties performed; (6) working conditions; and (7) other terms and conditions of employment.

1. Availability

OCR analyzed the ratio of the total number of coaches to the total number of participants for each program and compared the ratios. OCR excluded combined sports, as both male and female athletes were provided the same number of coaches. When comparing the four boys' teams and the four girls' teams, football and softball both had a student-coach ratio of 1:8. The remaining three girls' teams had a lower student-coach ratio than the remaining boys' teams. All of the girls' and boys' teams had assistant coaches. The only teams that did not have an assistant coach were golf and tennis, both of which are combined teams. The varsity football team had more assistant coaches than any other sport (10 assistant coaches); however, the football team had the most athletes and assistant coaches also served junior varsity and freshmen teams.

2. Assignment

The SISD provided OCR with the resume or curriculum vitae for each of the coaches. OCR compared the training, experience, and other professional qualifications of the coaches assigned to the boys' program with coaches assigned to the girls' program at the time of their hiring for their coaching positions. All of the head coaches for both boys' and girls' teams had experience coaching the sport except for the Boys' Soccer Head Coach and the Girls' Soccer Head Coach. Neither Soccer Coach had experience coaching Soccer; however, the Boys' Head Coach had experience coaching other sports and the Girls' Head Coach had experience playing at the High School and College levels, as well as playing Club-level soccer. Only one other head coach did not have any previous coaching experience, the Cross Country Head Coach, and she coached both boys and girls combined. Five Assistant Coaches had no previous coaching experience in the sport they are currently coaching – one Freshman Football Coach, one Boys' Soccer Assistant Coach, one Volleyball Assistant Coach, one Girls' Soccer Assistant Coach, and one Boys'/Girls' Assistant Track Coach; however, each had some familiarity with the sport. Further, OCR found an equal number of coaches had no previous coaching experience for boys' and girls' teams.

3. Compensation

OCR next reviewed the compensation for the SHS coaches. The SISD provided OCR with the 2013-2014 salary schedule for teachers and a detailed list of the stipends provided for the specific coaching duties. The SISD informed OCR that all professional employees, including coaches, are paid salaries based upon the District's salary schedule. OCR's review of the coaching salaries and the District's salary schedule confirmed that the SISD followed its salary schedule in determining the salary of its coaches. OCR noted that the Head Football Coach/Athletic Director is employed on a multi-year certified administrator contract and is therefore not subject to the same salary table as other SHS coaches.

OCR's analysis revealed that there were no notable differences with respect to availability and assignment of coaches to boys' and girls' teams, but that there were some differences between the boys' and girls' teams with regard to compensation of coaches. However, OCR did not find the differences resulted in a disparity or significant disparity. Thus OCR could not conclude by a

preponderance of the evidence that these differences were disparities that resulted in inequities between male and female athletes. Further, OCR determined that the observed differences were based primarily on the unique nature of the sport of football (e.g., more athletes, higher rate of injury among athletes, etc.). As noted in the Policy Interpretation, differences that are based on the unique nature of particular sports are not considered to the same extent as other differences.

e. Provision of Locker Rooms, Practice, and Competitive Facilities

The Policy Interpretation lists six factors to be assessed in determining compliance with the provision of locker rooms, practice, and competitive facilities component: (1) quality and availability of the facilities provided for practice and competitive events; (2) exclusivity of use of facilities provided for practice and competitive events; (3) availability of locker rooms; (4) quality of locker rooms; (5) maintenance of practice and competitive facilities; and (6) preparation of facilities for practice and competitive events.

OCR's interviews with student athletes confirmed that they were assigned lockers for the entire school year and had exclusive use of their assigned lockers. Student athletes participating in the following sports do not receive lockers: girls' and boys' golf, boys' tennis, baseball, girls' track, and girls' powerlifting.

OCR inspected the locker rooms during an onsite visit to the SISD and compared the quality of the locker room facilities for male and female athletes. Generally, OCR found the locker rooms were comparable and were maintained in a comparable manner. All athletes who were provided a locker had exclusive use of the locker for the duration of the year. While the football lockers were larger than the lockers for other sports, OCR notes that football requires more and larger equipment than do other sports. OCR did not find that these differences constituted a disparity or significant disparity.

OCR also inspected the practice and competitive facilities during an onsite visit to the SISD, including the two gymnasiums at SHS. Both girls' and boys' teams practice and compete in the gymnasium facilities. The boys' and girls' basketball teams, volleyball team, drill team, and physical education classes use the main gym, which was built in 1976. OCR found the quality of the main gym to be good. The seating capacity for the main gym is 650 permanent seats on each side, and the size of the gymnasium is standard. The freshman basketball teams, freshman volleyball team, physical education classes, cheerleading, drill team, flags, cheer, and robotics programs use the auxiliary gym, which was built in 1998. OCR found the quality of the auxiliary gym to be good; the seating capacity was 325. The auxiliary gym had a regulation court, six retractable baskets, lights, sound, and two scoreboards.

OCR also examined the "Green Room," which is located in the SHS Field house. The football, baseball, and softball teams use this facility, as well as other teams during inclement weather. The Green Room is a large indoor multi-purpose facility covered in artificial cushioned flooring.

OCR next examined the baseball field, which is used exclusively by the baseball team. OCR found the quality to be good and noted the field had two large bleachers with additional space for temporary bleachers, two batting cages, lights, wireless scoreboards, two dugouts, benches, storage under the press box, a concessions stand with storage, and bathrooms.

The SISD also uses facilities not owned by the District. OCR examined these facilities as well. OCR reviewed McClesky Field, which is part of the Stephenville, Texas, City Park. The junior varsity and varsity softball teams use the facility. OCR found the quality of the facility to be good. The City Park also contains the tennis courts where the boys' and girls' tennis teams practice.

Finally, OCR examined the Tarleton State University stadium, where the SHS Junior Varsity and Varsity football teams compete. OCR found the quality of the stadium to be good. According to Tarleton State, the seating capacity is approximately 7,000. The stadium has lights, seating with backs in certain areas, concessions, ticket booths, a PA system and access to lockers.

OCR found that there were some differences between the locker rooms and practice and competitive facilities used by male and female SISD athletes. However, OCR noted that both the softball and football teams compete at off-site facilities, while softball also practices offsite. OCR also noted that some of the differences, specifically with respect to the size of the locker room facilities for football players, are a result of the unique nature of the sport of football, which requires more and larger equipment than is required by other sports. However, OCR did not find that any of the identified differences constituted a disparity or significant disparity, as they did not deny or limit equal athletic opportunity for athletes of either sex.

f. Publicity

The Policy Interpretation lists three factors to be assessed in determining compliance with the publicity component<sup>3</sup>: (1) availability and quality of sports information personnel; (2) access to other publicity resources for boys' and girls' programs; and (3) quantity and quality of publications and other promotional devices featuring boys' and girls' programs.

The SISD does not have a specific policy concerning publicity for its athletic program and does not have a specific individual responsible for sports information or publicity. However, the SHS

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<sup>3</sup> OCR has determined that the provision of cheerleaders, pep bands, drill teams, etc., shall be investigated under the publicity program component when a complainant alleges noncompliance in the provision of such groups or allegations of noncompliance are made during the course of the investigation. The provision of such groups need not be investigated absent allegations of noncompliance. When allegations of discrimination are made regarding the provision of cheerleaders, etc. (which is more common for interscholastic than intercollegiate athletics programs), the investigator should interview administrators, coaches, and athletes regarding the provision of such groups and the extent that such groups are available to teams, and request an explanation of the policies and procedures for making each group available to any team. The information obtained should be analyzed to determine whether there is a disparity in the provision of cheerleaders, etc., and this analysis is to be incorporated into the analysis for the other factors listed above. Participation in and membership policies for such groups are to be investigated under 34 C.F.R. § 106.31 regarding education programs and activities and are not to be included in an athletics investigation.

publishes a schedule of activities, which includes athletic events, in hard copy and on its website. The SISD maintains an SHS Athletics Facebook Page (“Stephenville HS Yellowjackets & Honeybee Athletics”) for both of its athletics programs. OCR viewed the Facebook Page and found “status updates” concerning both male and female athletes and photographs of both male and female athletes. Further, the Facebook Page provided general information concerning the athletics programs and sports camps at the SISD.

Twice per year, an outside company that has an agreement with the SISD prints a poster featuring both male and female SHS athletes and the schedules for all teams during the upcoming season. The SHS makes daily announcements concerning athletic events and the accomplishments of both male and female athletes and places announcements on the marquee outside of the school. Local media (KSTV radio and the Stephenville Empire Tribune) cover athletic events for both boys and girls, and KSTV radio hosts a show with the SISD Athletic Director weekly during the fall semester and monthly during the spring semester.

OCR reviewed the publications that the SISD provided to OCR for all SHS teams. The SISD provided OCR with the SISD weekly schedule of activities from the week of August 19, 2013, to the week of February 23, 2014. The schedule of activities provided the dates and times for District events, including athletic events for both boys’ and girls’ teams. The SISD also provided OCR with a copy of a 2013 Playoffs program for the SHS football team’s November 13, 2013, game versus Brownwood, which included a list of booster club members, information about the team, a summary of the season, the team roster for both the SHS team and Brownwood team, photos of parents and seniors, individual photos of the football players, group photos of the SHS cheerleaders, group photos of the SHS band, and a group photo of the SHS girls’ and boys’ cross-country team. The SISD provided OCR with a copy of a 2013 Homecoming program for the SHS football team’s October 18, 2013, game versus Alvarado, which included booster club membership information; a message from the Superintendent; advertisements from local businesses; a biography and photographs of the Athletic Director; group and individual photographs of the football coaches; group photographs of the football teams, homecoming court, cheerleaders, athletic trainers, flag runners, dance team, band directors, band, volleyball teams, and cross-country team; photos of previous football and volleyball state champion teams; individual photographs of the football players; the team rosters for both the SHS football team and Alvarado football team; the 2013 volleyball schedule; and individual advertisements for both senior male and female athletes.

The SISD provided two large posters, one for Fall 2013 and one for Spring 2014. The SISD informed OCR that a vendor creates these posters, which include advertising for local businesses. The Fall 2013 poster included pictures of both male and female athletes and the schedules for football (varsity, junior varsity, freshman A, and freshman B), cross-country, and volleyball (varsity, junior varsity, and freshman). The Spring 2014 poster included pictures of both male and female athletes and the schedules for varsity baseball, softball, powerlifting, blue/gold baseball, tennis, track, girls’ soccer, and boys’ soccer.

The complainant provided OCR with a copy of a 2014 varsity baseball schedule, which provided the team's schedule and included advertisements. The complainant stated that he observed the baseball schedule at the SISD administration building and did not see any schedules for any girls' teams.

The complainant informed OCR that the football team had glossy tickets with photographs of players and provided OCR with a copy of the ticket. During OCR's interviews and onsite inspection OCR inquired as to whether any other team had such a ticket. The X---phrase redacted---X informed OCR that the football team was the only sport that had an actual ticket and that the company that produced the tickets paid for them. The XXXX XXXX further informed OCR that the reason the SISD had tickets for the SHS football team was because football was the only team that had reserved seats and noted that there is a waiting list for tickets.

OCR further reviewed the availability of cheerleaders, band, drill team, and color guard at athletic events. According to the SISD, cheerleaders cheer at all playoff games for football, volleyball, and basketball. Varsity cheerleaders perform at varsity football games, and junior varsity/9<sup>th</sup> grade cheerleaders perform at non-varsity home games. Cheerleaders perform at home District volleyball games and home District basketball games for boys and girls. The band, drill team, and color guard perform at the football games and pep rallies.

Further, OCR noted that the boys' teams are called the "yellow jackets" while the girls' teams are called the "honeybees." The complainant raised concerns regarding the different mascots during his initial complaints and interviews with OCR. While the teams had different names, OCR did not find that these differences affected the teams' publicity, as publications referred to both the yellow jackets and honeybees and included the symbols for both on the schedule of activities and other publications where both boys' and girls' teams were represented.

OCR found that the football team had photographic tickets and programs, while no other team, regardless of gender, was provided these publicity items. All other teams were included on the weekly schedule of activities, marquee, and announcements. Both boys' and girls' teams were represented at pep rallies and had cheerleaders performing at their competitions. Based on OCR's analysis, while there were some differences with regard to the publicity provided to the football team as compared to other teams, OCR did not find the differences resulted in a disparity or significant disparity. Thus OCR found insufficient evidence that these differences constituted disparities that resulted in inequities between male and female athletes.

## **Issue 2**

Whether the SISD discriminated against female SHS student athletes on the basis of sex by treating them differently than one or more similarly situated male SHS student athlete in providing college scholarship assistance, in violation of Title IX at 34 C.F.R. § 106.31.

The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), prohibits recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise

subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's sex. In considering allegations that a recipient has discriminated on the basis of sex, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent). Absent direct evidence that a recipient discriminated on the basis of sex, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of sex discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another sex. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient's asserted reasons for its actions are pretext for sex discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

The complainant alleged that female SHS athletes were treated differently than male SHS athletes on the basis of sex because male athletes were provided more assistance in obtaining college athletic scholarship. Specifically, in his amended complaint, the complainant stated, "In regards to support, SISD goes to great lengths to get boys athletics scholarships to college," and provided OCR with a document he obtained through an open records request from the District. The 2012 document listed the name, telephone number, and email address for the SHS Head Football Coach and his secretary; the school's address; and the names, positions, statistics (i.e., height and weight), telephone numbers, and ratings of current football players who were listed as "prospects." The complainant alleged that he received no such document for any female athletes.

The SISD informed OCR that it does not have any written policies or procedures concerning providing assistance to student athletes in obtaining college scholarships. All students, including athletes, are provided academic transcripts as requested when applying to colleges and universities.

OCR interviewed student athletes and surveyed coaches to confirm the types of assistance provided to athletes in obtaining college athletic scholarships. Coaches of both girls' and boys' sports informed OCR that they take the following steps in assisting students in obtaining college athletic scholarships: varsity games are filmed, game films are sent to collegiate coaches upon the request of the student athlete or collegiate coach or without such a request, game highlight videos are sent to collegiate coaches upon the request of the student athlete or collegiate coach or without such a request, SISD coaches contact collegiate coaches on behalf of student athletes with or without a request from the student, SISD coaches send biographies, statistics or times to collegiate coaches upon the request of the student athlete or collegiate coach or without such a request, student athletes are provided videos of skills, and high school coaches nominate student athletes for all-star teams. Coaches of both girls' and boys' sports informed OCR that the assistance provided to student athletes in obtaining college scholarships did not differ for male

and female athletes. The X---phrase redacted---X coach informed OCR that college athletic recruitment can differ by sport. The XXXX XXXX explained that in some sports, such as baseball, volleyball, and soccer, college coaches rely upon club or select teams to recruit and evaluate potential student athletes; however college football recruiters rely upon the film, highlight videos, statistics, and transcripts provided by high school coaches and student athletes.

Further, student athletes informed OCR that they were aware of both male and female athletes who had received assistance in obtaining college athletic scholarships. Both male and female athletes informed OCR that they did not receive assistance in obtaining college athletic scholarships. Other male and female athletes indicated they were not sure whether any assistance was provided.

Based upon the above information, OCR determined that there was insufficient evidence to establish that the SISD treated female athletes differently than male athletes with regard to the level of assistance provided in obtaining college athletic scholarships.

### **Issue 3**

Whether the SISD retaliated against the complainant's XXXX when the SISD failed to respond to complaints that X---phrase redacted---X bullied and harassed by other students because he complained of sex discrimination in athletics, in violation of Title IX at 34 C.F.R. § 106.71.

The complainant alleged that the SISD failed to respond to complaints that XXXX were being bullied and harassed by teachers and students and that the SISD's lack of response was retaliation for his previous complaints of discrimination. Specifically, the complainant alleged that during the XXXX, XXXX (Student 1) was X---phrase redacted---X class; however, a group of XXXX said that Student 1 X---phrase redacted---X. The complainant said he reported this to the XXXX XXXX XXXX XXXX Principal who took no action. The complainant alleged that, during the XXXX-XXXX school year, students said that X---phrase redacted---X was XXXX fault. The complainant stated that on XXXX, 2014, a student X---phrase redacted---X. The complainant and XXXX stated that, during the XXXX-XXXX school year, a student said X---phrase redacted---X; however the complainant's XXXX noted that this statement was not directed XXX. The complainant stated that he believed XXXX were being singled out because of his complaints, and the XXXX was not taking any action to respond to the bullying and harassment because of his complaints. However, during an interview, the complainant admitted that the XXXX Principal had responded to his complaint concerning XXXX XXXX XXXX and further stated that he believed the XXX was doing enough "to cover themselves legally" but was still not investigating sufficiently.

In order for an allegation of retaliation to be sustained, OCR must determine whether:

- (1) The complainant or other alleged injured party engaged in a protected activity;
- (2) The recipient had notice of the protected activity;
- (3) The recipient took an adverse action against the complainant or other alleged injured party contemporaneously with or subsequent to the protected activity; and



(4) There was a causal connection between the protected activity and the adverse action.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

OCR first considers whether the complainant engaged in a protected activity. A “protected activity” is one in which a person either opposes an act or policy that is unlawful under any of the laws that OCR enforces; files a complaint, testifies, assists or participates in an investigation, proceeding or hearing conducted under the laws that OCR enforces; or otherwise asserts rights protected by the laws enforced by OCR. The complainant filed internal grievances with the SISD alleging sex discrimination in athletics and filed a Federal lawsuit alleging sex discrimination in athletics. Therefore, OCR determined that the complainant engaged in protected activity.

OCR next considers whether the SISD had notice of the complainant’s protected activity. A recipient must have notice of any protected activity for OCR to conclude that it retaliated because of the protected activity. The SISD acknowledged receipt of the complainant’s internal grievances and stated that it investigated the internal grievances. Therefore, OCR determined that the SISD had notice of the complainant’s protected activity.

The third step in OCR’s analysis involves determining whether the complainant’s XXXX were subjected to an adverse action. To be an “adverse action,” the recipient’s action must significantly disadvantage the complainant or other alleged injured party as a student or employee, or his or her ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual’s employment or educational opportunities, the action could be considered to be retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claim(s). To make this determination, OCR considers (on a case-by-case basis, in light of all the facts and circumstances) whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse.

The complainant asserted that the alleged adverse action was that XXXX were bullied and the District failed to respond. OCR reviewed documents provided by the SISD concerning its responses to the complainant’s complaints and interviewed the XXXX Principal concerning her responses to the complainant’s concerns about bullying. The XXXX Principal informed OCR that the complainant had informed her that he believed XXXX were being bullied; however, she noted that the complaints were “vague” and “cryptic.” The XXXX Principal stated that the complainant informed her that “kids are being ugly to XXXX” and said kids were talking about XXXX in the hall and saying X---phrase redacted---X; however, the complainant did not identify specific students who were making the comments. The XXXX Principal stated that she

investigated each complaint concerning the treatment of the complainant's XXXX, sent an email to all teachers in XXXX to monitor the hallways and listen for any comments directed to or about the complainant's XXXX, interviewed teachers, monitored the hallway for comments, had the Assistant Principal monitor the hallways for comments, and asked to speak with the complainant's XXXX about the bullying but the complainant refused. The XXXX Principal provided emails that she sent to staff and to the complainant during her investigations into the alleged bullying. The XXXX Principal stated that the complainant did not provide any names, locations, etc. as to where the comments about XXXX XXXX were made.

The XXXX Principal provided OCR with a memorandum dated XXXX, which documented the complainant's concerns regarding the XXXX XXXX issue. The memorandum indicates that the XXXX Principal agreed to follow-up on the complainant's concerns and included as an attachment an email she sent to XXXX staff regarding monitoring students for their comments about Student 1. Further, the XXXX Principal informed OCR that she interviewed the classroom teacher, who did not hear anything concerning XXXX XXXX issue. The XXXX Principal stated that the complainant had never informed her that XXXX was X---phrase redacted---X and that, had she been informed, she would have responded.

OCR reviewed the numerous reports the complainant made regarding XXXX treatment and the SISD's responses. Based on that review, OCR has determined that there is insufficient evidence that the SISD failed to respond to the complainant's concerns and thus subjected either the complainant or XXXX to an adverse action. Thus, OCR found insufficient evidence to establish that the SISD retaliated against the complainant or XXXX.

### **Conclusion**

Based upon the above information, OCR determined that there is sufficient evidence to establish that the SISD has failed to provide equal athletic opportunities for female athletes with regard to the accommodation of athletic interests and abilities program component. However, OCR found insufficient evidence with regard to all of the remaining allegations (allegations 1(b)-(f), 2, and 3), which are closed as of the date of this letter.

To address the above-referenced compliance concerns, the SISD submitted the attached Resolution Agreement (Agreement) on September 25, 2015. In the Agreement, the SISD will conduct an objective assessment of the student body of SHS to determine the existence and/or scope of any unmet athletic interests of its female students. If 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 SHS, the District will add athletics opportunities until such time as either (1) SHS is fully and effectively accommodating the expressed interests and abilities of female students in SHS; or (2) the participation rate for female students in SHS's interscholastic athletics program is substantially proportionate to their rate of enrollment at SHS.

OCR has determined that the Agreement, when fully implemented, will resolve the compliance concern identified during the investigation. Accordingly, as of the date of this letter, OCR is

closing its investigation of this complaint; however, OCR will actively monitor the District's implementation of the Agreement. Please be advised that if the District fails to take the action required under the Agreement, OCR will immediately resume its compliance efforts.

This concludes OCR's investigation of the complaint and should not be interpreted to address the SISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination of an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may file a private suit in federal court whether or not OCR finds a violation.

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

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank you and your staff for your cooperation throughout its investigation of this matter. If you have any questions or concerns, please contact Mr. Marvin Macicek, Investigator, at 214-661-9636, or at [marvin.macicek@ed.gov](mailto:marvin.macicek@ed.gov), or Mr. Timothy Caum, Supervisory Attorney/Team Leader, at (214) 661-9648, or at [timothy.caum@ed.gov](mailto:timothy.caum@ed.gov).

Sincerely,

Taylor D. August, Director  
Office for Civil Rights  
Dallas Office

Enclosure