



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
WESTERN DIVISION, SEATTLE OFFICE

June 24, 2010

Mr. George Boland
Superintendent
Idaho Falls School District 91
690 John Adams Parkway
Idaho Falls, Idaho 83401

Re: Idaho Falls School District 91
OCR Reference No. 10095002

Dear Mr. Boland:

The Office for Civil Rights (OCR) has completed its compliance review of the Idaho Falls School District 91 (district) under title IX of the Education Amendments of 1972. The review addressed whether the district is in compliance with the regulatory requirements of Title IX at 34 Code of Federal Regulations (CFR) Section 106.41 with regard to interscholastic athletics.

OCR enforces Title IX and its implementing regulations, which prohibit discrimination on the basis of sex in programs and activities that receive federal financial assistance from the U.S. Department of Education. The district is a recipient of federal financial assistance from this Department and is subject to Title IX and the regulations promulgated under that statute. Under Title IX, a school district that sponsors an athletic program must provide equal athletic opportunity for members of both sexes. Among other factors, the Title IX regulation requires a recipient to equally and effectively accommodate the athletic interests and abilities of students of both sexes.

OCR has determined that the evidence supports a conclusion that the athletic program at the district's high schools does not equally and effectively accommodate the athletic interest and abilities of female students as compared to male students. Therefore, the district is not complying with Title IX with regard to the issue addressed by this compliance review. The district has agreed to take actions to resolve the compliance concern identified by OCR by implementing the enclosed Settlement Agreement.

OCR notified the district of this compliance review by letter dated December 19, 2008. OCR requested information about the district's athletic programs in contact with you and

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your athletic directors and by letter dated January 29, 2009. The data requested included participation figures for interscholastic and club sports, the numbers of students cut from athletic teams, the district's policies and procedures for requesting the addition of teams

and squads and the actual requests received, and copies of any interest surveys conducted by the district or any other means for collecting information about students' athletic interests and abilities. Following review of the material submitted by the district, OCR spoke further with you and your athletic directors and conducted interviews of persons involved in club sports in the Idaho Falls area.

The issue addressed was whether the district discriminates against students based on gender with regard to interscholastic athletics. In assessing compliance in this area, OCR relies on the Department's Policy Interpretation, 44 Federal Register 71413 (December 11, 1979) and the Title IX Athletics Investigator's Manual (1990). The Department has provided further guidance on this issue through its policy clarifications issued January 16, 1996, March 17, 2005, and April 20, 2010.

Under this policy, institutions must effectively accommodate the interests and abilities of students to the extent necessary to provide equal opportunity to members of both sexes. OCR applies the following Three-Part Test to determine whether an institution is equally effectively accommodating the athletic interests and abilities of male and female students:

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

To establish compliance, at least one prong of the above Three-Part Test must be satisfied.

Prong 1: Whether participation opportunities for male and female athletes are substantially proportionate to their respective enrollments.

Enrollment and Participation: The district has two high schools with interscholastic athletics: Idaho Falls and Skyline High School. In 2007-2008, female students composed 1,496 of 3,048 students, or **49.08%** of total enrollment. The participation rate for female students in interscholastic athletics excluding those participating in dance and cheer was 374 of 972 participants, or **38.48%**. The disparity between female enrollment (49.08%) and female athletics participation (38.48%) was 10.6 percentage points.

In 2008-2009, females composed 1,456 of 3,002 students, or **48.5%** of total enrollment. The participation rate for female students in interscholastic athletics was 370 of 1,010 participants, or **36.6%**. The disparity between female enrollment (48.5%) and female athletics participation (36.6%) was 11.9 percentage points.

Analysis: For the 2007-2008 and 2008-2009 school years, the number of female athletic opportunities needed to reach proportionality with the number of opportunities provided to male students exceeded 100 additional opportunities for females each year. Because this number is large enough to sustain one or more viable teams, the district's interscholastic athletics programs did not satisfy the requirements of "substantial proportionality." Therefore, OCR concludes the district did not satisfy Prong 1 standard of the Three-Part Test.

Prong 2: Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex.

Sports Offerings: In 2007-2008 and 2008-2009, the district fielded 9 men's and 8 women's athletic teams. Girls were permitted to participate in co-ed wrestling, but only 2 female students participated at one school for one season during the 2-year period OCR reviewed. The women's teams were volleyball, cross-country, soccer, basketball, track, golf, tennis, and softball. The men's teams were football, cross-country, soccer, basketball, wrestling, track, golf, tennis, and baseball.

Program History: Program history since 1982, includes the addition of bowling for both genders at one high school in the 1980s, but the sport was eliminated in the mid-1990s. Boys and girls soccer was added at both high schools in 2000.

Analysis: The information shows that the district has had 8 varsity sports available for girls and 9 sports available for boys since 2000 with co-ed wrestling available for girls, but minimal interest has been shown by girls in that sport. The district has not added any sports for either gender in 9 or 10 years. Therefore, OCR concludes that the district has not shown a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of the underrepresented sex. Therefore, it has not satisfied the standard of Prong 2.

Prong 3: Where the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

Documentation of Student Interest: The district informed OCR that it has never conducted a survey of student interest. The district has no formal process that allows for students to request the addition of varsity athletic teams. District officials indicated that they had not received any formal requests from students to establish varsity teams in any additional sports.

District officials reported that there have been casual inquiries from parents about adding swimming, (ice) hockey and field hockey. According to the district, ice hockey and swimming are co-ed sports in the community and the field hockey request was from a parent with children of both genders.

Club Sports/Intramural Sports: High school level club sports exist within the district. The district provides very limited support and has minimal involvement with its club sports of ice hockey, lacrosse, and swimming. There is no financial support, no transportation and no excused absences for practice or competition for the club sports. No facilities are provided for swimming or ice hockey. Students can purchase club “letters” and the coaches may use the same “banking” facilities provided to other school clubs to collect fees from students and pay expenses.

Gymnastics: The district offers gymnastics for girls at the junior high level. There is no interscholastic competition; however, there is intramural competition between squads at the three junior high schools. According to the district, there have been no requests to add gymnastics at the high school level despite having intramural squads for girls at the junior high school level. Based on information obtained during its investigation, OCR determined that 8 high school age girls from the city of Idaho Falls compete in a local gymnastics club, however we were unable to determine if these girls attended school in the district (there are two districts in Idaho Falls: Idaho Falls School District 91 and Bonneville School District 93). The club coach told OCR that the program at the district’s junior high school level was not rigorous enough to give girls the skill level to compete at the level at which girls in the club gymnastics program compete, but rather provided general gymnastics skills. No gymnastics teams, either club or interscholastic, exist at any of the high schools in the district’s normal competitive region.

Lacrosse: Lacrosse is a boys, only, club sport with approximately 30 participants in the 2008-2009 season.

Ice Hockey: Approximately, 12 girls between the ages of 11 and 19 from the district participated in ‘no-check’ type ice hockey through a private association during the winter

2008-2009 season. OCR determined that there are no ice hockey teams as part of the interscholastic athletics program at any of the high schools in the district’s normal competitive region.

Swimming: According to the volunteer swim coach at Idaho Falls High School, the district usually has a combined participation rate of 25 to 30 girls and 20 to 25 boys for both schools. The maximum number of swimmers allowed on each team is 40, but neither school has ever had that number. In April 2007, statewide swimming supporters and volunteer coaches petitioned the Idaho High School Activities Association (IHSAA) to sanction swimming as a fall season sport. At that time the material presented was that statewide over 40 IHSAA schools had club teams with 900 athletes participating. The IHSAA surveyed district superintendents with 30% in favor of adding swimming. The IHSAA denied the petition in August 2007.

Available Competition for Additional Sports: The district is a member of IHSAA. The IHSAA sanctions 11 sports: Football, Volleyball, Soccer, Cross-Country, Wrestling, Basketball, Softball, Baseball, Golf, Track and Field, and Tennis.

The district is classified as a 5A Division school in the High Country conference. There are three other schools in that conference. The district’s teams also compete against 5A schools in the Southern Conference, 4A schools in the High Country, Great Basin East and West Conferences, and nearby 3A schools in the Mountain Rivers Conference. The schools in the district’s normal geographic competitive area do not offer additional interscholastic competition in sports other than those offered by the district and sanctioned by the IHSAA.

Cuts from Sports Currently Offered: During the 2007-2008 and 2008-2009 school years, the district’s high school interscholastic squads cut girls as follows:

Sport	Idaho Falls H.S. 2007-2008	Idaho Falls H.S. 2008-2009	Skyline H.S. 2007-2008	Skyline H.S. 2008-2009
Soccer	5	5	0	0
Volleyball	3	3	0	0
Basketball	6	1	3	4
Softball	5	7	0	1

The district has an established policy of keeping as many students as possible on its athletic squads and coaches are encouraged to keep as many students as they can without diluting the quality of the program. (Reference the District’s Athletic Handbook, Section IV, p. 16). The district also has written policies and procedures with regard to cutting students from athletic squads that assign the selection of squad members to the coaches and that require coaches to

provide information to each squad candidate regarding the extent of the try-out period, the criteria used to select the team, the number to be selected, and the practice and game commitments involved.

The procedure with regard to making cuts, when such cuts are necessary, require that each candidate have completed a minimum of three practice sessions and have performed in at least one intra-squad game. The procedures also require the coach to post a list of final team members, discuss the alternative possibilities for participation in the sport or other areas of the activities program and, if a coach/advisor foresees difficulties arising as a result of squad cuts, to discuss the situation with the athletic/activities director. The district also has written criteria for squad selection that require students to meet the IHSAA eligibility requirements, have the requisite skills (as defined by the coach), commitment, team play approach, and sportsmanship in order to make the team.

According to coaches interviewed, students were cut from squads for a variety of reasons including lack of skills and skill related safety concerns. Some freshmen girls were sent down to a lower level squad such as the 9th grade team for further experience. Coaches also noted that some girls dropped out or self-cut when told that they would likely not receive significant playing time due to lower skill level as compared to others on the team. Finally, some were cut because it was considered unfair to carry students on a team when they would not get much playing time due to lack of skills.

Analysis: The evidence shows that the district has not taken any formal steps to determine if there is any unmet interest in adding girls' teams. It has not conducted any interest surveys. The district has no established process for students to request the addition of an interscholastic athletic team and the evidence shows that the district did not utilize other means that may have been available to assess unmet interest, e.g., interviews with students or coaches regarding interests in particular sports, or participation rates in middle schools, amateur athletic associations and community sports leagues that operate in the region. The district has received some inquiries from parents regarding the addition of swimming, lacrosse and ice hockey.

With regard to current teams, the district does not cut enough girls to populate another squad of any sport. According to the former softball coach at one of the district's high schools, during the 2008-2009 school year, 3 or 4 girls were cut whose skills were borderline and in his opinion may have had the ability to compete at either the varsity or junior varsity level.

The evidence established that the number of girls interested in participating in swimming is more than sufficient to establish a team. The evidence also established that these students have the ability to compete against other high school level swimmers.

As indicated above, the IHSAA has elected not to sanction swimming as a high school sport. OCR has determined that there are 43 high schools that had swimmers participating in the

November 2009 Idaho High School Swimming Championship in Boise, Idaho. Both district high schools, Idaho Falls and Skyline High School, had club swim teams participate in the competition, but did not provide any financial support such as transportation. Two other schools that are located near Idaho Falls also sent teams to the non-sanctioned state competition and 12 schools with which the district's high school teams have scheduled interscholastic athletic competitions had club swim teams that competed in the 2009 High School Swimming Championship.

Under part three of the Three-Part Test, OCR determines whether an institution is fully and effectively accommodating the interests and abilities of its students who are members of the underrepresented sex. 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 this case, the evidence established that the first two elements (unmet interest and the ability to sustain a swim team) are satisfied by virtue of the fact that both district high schools have affiliated club swim teams that have participated and competed in swimming competitions in the school's normal geographic competitive region (and across the state-in-state swimming championships) as a club sport.

With regard to the third element, OCR must consider whether there is a reasonable expectation of interscholastic competition for a swim team in the district's normal competitive region. In evaluating available competitive opportunities in the geographic area in which the institution's athletes primarily compete, OCR considers:

- competitive opportunities offered by other schools against which the institution competes; and
- competitive opportunities offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete.

The evidence established that with regard to swimming there are numerous female students currently participating in non-sanctioned competitive swimming, and a significant number of participating schools in the normal competitive area fielding non-sanctioned swimming teams indicating available competition in the geographic area in which the district's athletes primarily compete and statewide. The evidence also established that there is an existing, highly structured statewide volunteer organization that has sought IHSAA sanction for the sport and that this organization organizes and runs district and state championship tournaments in the sport. The evidence also established that the level of competition in swimming is at a level similar to the competition that is provided in other sports that are offered by the district and that are sanctioned by the IHSAA. Based on that information, OCR has determined, under its Policy Interpretation, that there is a reasonable expectation of interscholastic competition for a swim team in the district's normal competitive region.

Because the evidence established that there is sufficient unmet interest among girls in swimming, that there is sufficient ability among girls at the district's high schools to sustain a swim team, and that there is a reasonable expectation of competition for a swim team, OCR has determined that the district has not demonstrated that the interests and

abilities of its female students have been met and, therefore, that the district's high school athletic program does not equally and effectively accommodate the athletic interest and abilities of female students at the district's high schools as required under Title IX.

In response to OCR's investigative findings and conclusions, the district has agreed to take the actions set forth in the enclosed Settlement Agreement (agreement) to bring itself into compliance with Title IX. OCR concludes that the district will be in compliance with Title IX, with respect to the issue addressed in this review, when it has fully implemented the agreement. OCR's determination of compliance is contingent upon the district's implementation of the commitments set forth in the agreement. The district's failure to implement these commitments will result in further appropriate action by OCR to ensure compliance with Title IX.

The findings of fact and conclusions in this letter are limited to the specific facts and circumstances of this compliance review. Letters of findings contain fact-specific findings and determinations. Letters of findings are not formal statements of OCR policy and they 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.

I appreciate the cooperation you and your athletic directors extended to OCR. If you have any questions about this letter, please feel free to contact Shirley Oliver, Equal Opportunity Specialist, or Timothy Sell, Staff Attorney. They may be reached at (206) 607-1600, or by e-mail at shirley.oliver@ed.gov, or timothy.sell@ed.gov.

Sincerely,

/s/

Gary D. Jackson
Director
Seattle Office

cc: Thomas Luna, Superintendent of Public Instruction