



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

September 16, 2016

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Mr. Mark Beckman  
Executive Director  
Montana High School Association  
1 South Dakota St  
Helena, Montana 59601

Re: Montana High School Association  
OCR Reference No. 10164016

Dear Mr. Beckman:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against the Montana High School Association (Association). As explained below, prior to completion of OCR's investigation, the Association expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

The complaint alleged that the Association discriminates against girls based on sex, by failing to provide them with equal athletic opportunities in basketball with respect to the site location of the association's post-season basketball tournaments.

OCR accepted this complaint for resolution under the authority of title IX of the Education Amendments of 1972 and its implementing regulation. These statutes prohibit discrimination on the basis of sex in programs and activities that receive federal financial assistance from the Department. OCR also has jurisdiction over entities to which recipients have ceded controlling authority over federally funded programs. OCR has jurisdiction over the Association since the Association exercises controlling authority over all aspects of Montana high school interscholastic athletics and has been granted the authority to do so by Montana high schools, which are recipients of federal financial assistance from this Department.

The regulation implementing Title IX, at 34 C.F.R. §106.41(c) provides that a recipient that operates or sponsors interscholastic athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available OCR considers, among other factors, the scheduling of games and practice time, under §106.41(c)(3) and the provision of locker rooms, practice and competitive facilities, under §106.41(c)(7).

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The investigation to date indicated that the Association has in years past, scheduled some girls' basketball post-season Class A and Class C tournaments in smaller venues, with smaller seating capacities and in communities with smaller population centers, while the same boys' basketball post-season tournaments were held in larger venues, located in communities with large population centers. But beginning in 2016, the Association has contracted with venues to schedule both boys' and girls' Class A and Class C tournaments in larger venues located in larger communities and has scheduled boys' and girls' tournaments in the same facilities in successive weeks.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and must be consistent with applicable regulations. In this case, the Association requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the Association resulted in the Association signing the enclosed agreement.

The actions that the Association will take under the agreement include a general agreement to provide girls and boys equal opportunities to participate in post-season tournaments and an assurance that the Association will provide equitable tournament facilities for boys and girls that meet the requirements of Title IX. The agreement also requires the Association, in selecting and assigning venues for state post-season basketball tournaments to consider the equivalence for boys and girls of the overall quality of the facilities, whether the teams have exclusive use of the facilities during the tournament, the availability and quality of locker rooms, whether the facilities are comparably maintained and prepared, seating capacities, and whether the venues are located in communities that afford adequate lodging and other essential services so that boys' and girls' teams can equally accommodate those who seek to travel to and attend their tournaments.

In selecting venues, the Association also agrees, to the extent possible, to schedule boys' and girls' basketball tournaments in the same facility and, if the boys' and girls' tournaments are not scheduled on the same dates, that it will schedule the tournaments in a manner that is equitable and consistent with the requirements of the Title IX regulation at 34 C.F.R. 106.41(c)(3), including annually rotating which of the tournaments occurs first.

The Association also agrees to continue adhering to the Agreement entered into by the Association to resolve *Ridgeway v. MHSAA*, under which the Association agreed to consider and make reasonable efforts to schedule tournaments or statewide meets at the same location during the same week or appropriate time period, to schedule the dates for the tournaments or statewide meets and determine their locations based upon gender-

neutral factors, and to continue to consider and make reasonable efforts to schedule post-season basketball tournaments for boys and girls during the same week in all of its classifications.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that the Association 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, we 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 will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by April 30, 2017.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Timothy L. Sell, attorney, by telephone at (206) 607-1639 or by e-mail at [timothy.sell@ed.gov](mailto:timothy.sell@ed.gov).

Sincerely,

/ s /

Kelli Lydon Medak  
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement