



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NORTH CAROLINA
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August 29, 2016

Dr. Sharon Contreras
Superintendent
Guilford County Public Schools
712 N. Eugene Street
Greensboro, NC 27401

RE: OCR Complaint No. 11-14-1309
Letter of Finding

Dear Dr. Contreras:

This letter is to notify of the outcome of the above referenced complaint, which was filed on August 22, 2014, with the District of Columbia Office for Civil Rights (OCR), U.S. Department of Education (the Department), against Guilford County Public Schools (the District). The Complainant alleged that the District discriminates against female students participating in the basketball program at XXXX (the School). More information on the specific complaint allegations and OCR's investigation is provided below.

Complaint Allegations

Allegation 1: The District discriminates against female athletes in the basketball program at the School by failing to provide them with equivalent:

- a. Coaching and assignment of coaches (*see* 34 CFR § 106.41(c)(5)&(6)); and
- b. Scheduling of games and practice times (*see* 34 CFR § 106.41 (c)(3)).

Allegation 2: The District retaliated against the Student when she was removed from the girls' basketball team on February 3, 2014, after requesting a meeting with the principal.

OCR's Responsibilities

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

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 general Title IX standard governing athletics is as follows:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis. 34 C.F.R. § 106.41(a).

In determining whether recipients are in compliance with Title IX with respect to athletics, OCR follows “Title IX of the Education Amendments of 1972; a Policy Interpretation: Title IX and Intercollegiate Athletics” (the Policy Interpretation), which was published at 44 Federal Register No. 239, Dec.11, 1979, and the “Title IX Athletics Investigator’s Manual” (1990) (the Manual). We note that a school district is required to ensure that its athletics program, as a whole, provides equitable opportunities to both boys and girls. When disparities between boys’ and girls’ athletics programs are noted, we first consider whether the differences are negligible. When disparities are not negligible (that is, significant), we determine whether they are the result of non-discriminatory factors. Finally, we determine whether any disparities result in the denial of equal opportunity to male or female athletes, either because the disparities collectively are of a substantial and unjustified nature or because the disparities in individual program areas are substantial enough by themselves to deny equality of athletic opportunity.

Allegation 1a: Coaches

In determining whether a recipient is in compliance with Title IX with respect to coaching, the Policy Interpretation provides that OCR looks to the following factors:

- a. Regarding the opportunity to receive coaching, the relative availability of coaches and assistant coaches;
- b. With respect to the assignment of coaches: (1) the training, experience, and other qualifications of coaches; and (2) the professional standing/success of coaches; and
- c. Regarding the compensation of coaches, the: (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.

The Manual states that, in making compliance determinations concerning coaching, “OCR’s primary focus must be [on the] availability of coaches,” then qualifications, and, finally, compensation.

(a) Opportunity to Receive Coaching

As stated above, the Policy Interpretation provides that the equitability of the opportunity of girls and boys to receive coaching is determined by comparing the girls’ and boys’ teams in terms of the availability of coaches and assistant coaches. The Manual provides that we will make this determination by comparing: (1) the number of coaches available to each team in the boys’ and

girls' programs; (2) the ratio of the total number of athletes to the total number of coaches in each program; (3) the number of boys' and girls' teams that have assistant coaches; and (4) the number of assistant coaches available to each team in the boys' and girls' programs.

For the 2013-2014 school year, the School fielded 18 boys' teams with 32 assigned coaches for an overall ratio of 1.8 coaches per team. The School also fielded 18 girls' teams with 26 assigned coaches for an overall ratio of 1.4 coaches per team. Despite this greater average number of coaches for the boys' program, we do not find this to be a compliance issue in light of the following discussion in the Policy Interpretation.

If comparisons of program components reveal that treatment, benefits, or opportunities are not equivalent in kind, quality or availability, a finding of compliance may still be justified if the differences are the result of nondiscriminatory factors. Some of the factors that may justify these differences are as follows:

Some aspects of athletic programs may not be equivalent for men and women because of unique aspects of particular sports or athletic activities. This type of distinction was called for by the "Javits Amendment" to Title IX which instructed [the Agency] to make "reasonable (regulatory) provisions considering the nature of particular sports" in intercollegiate [or interscholastic] athletics.

Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of facilities required for competition, and the maintenance/ upkeep requirements of those facilities. For the most part, differences involving such factors will occur in programs offering football, and consequently these differences will favor men. If sport-specific needs are met equivalently in both men's and women's programs, however, differences in particular program components will be found to be justifiable.

....

The activities directly associated with the operation of a competitive event in a single-sex sport may, under some circumstances, create unique demands or imbalances in particular program components. Provided any special demands associated with the activities of sports involving participants of the other sex are met to an equivalent degree, the resulting differences may be found nondiscriminatory.

A significant portion of this disparity is the result of the nondiscriminatory factors listed above in the Policy Interpretation; that is, for football, the rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of the facilities required for competition, and the maintenance and upkeep requirements of those facilities (as well as the high number of participants) justifies the higher number of coaching positions. If the football teams are not counted, the disparity between the average number of coaches for the boys' versus girls' programs decreases to 1.6 (26/16) coaches per team for the boys' program versus 1.4 (26/18) for the girls' program, a difference of .2 coaches in favor of the boys' program.

With respect to the second factor in the Manual for comparing the opportunity of boys versus girls to receive coaching (the ratio of the total number of athletes to the total number of coaches in each program), the ratios are 12.37 athletes per coach for the boys' program (396/32) and 9.34 athletes per coach for the girls' program (243/26). When you subtract the football team numbers, the boys' program ratio drops to 11.2 (292/26). Thus, each boy's coach has to coach 1.9 more athletes than each girl's coach.

In terms of the third and fourth factors in the Manual for comparing the opportunity of boys versus girls to receive coaching (regarding assistant coaches), the data indicate that the differences between the boys' and girls' teams are minimal. The information shows that 8 of the 18 boys' teams and 6 of the 18 girls' teams have had assistant coaches, and that the average number of assistant coaches for each team that had assistant coaches is 2.8 (23/8) for the boys and 1.3 (8/6) for the girls. If the football teams are excluded from the analysis, the boys' program had 2.1 assistant coaches for each team that had assistant coaches (13/6).¹ The difference between the number of boys' and girls' teams with assistant coaches is minimal and does not raise compliance concerns. Furthermore, there are generally the same number of assistant coaching positions per team for all sports that are played by girls and boys (e.g., basketball, soccer, and track). Based on all of the above, OCR determined that the availability of coaches was equivalent for boys' and girls' teams. Specifically, there was a slight disparity favoring boys regarding the coaches per team ratio, a slight disparity favoring girls regarding the athletes per coach ratio, and a minimal difference regarding the number of assistant coaches available to teams (excluding the non-comparable sport of football). OCR identified a slight difference of .8 assistant coaches (2.1 for the boys as compared to 1.3 for the girls) when excluding football) on average per team. OCR finds that average difference of less than one coach per team to be negligible in this case. Therefore, OCR determined that the District provided female athletes with an equal opportunity to receive coaching.

(b) Compensation of Coaches

We now look to whether the District's compensation of coaches for girls' and boys' teams at the School was equitable during the 2013-2014 school year, that is, whether the compensation of the coaches assigned to each program was equitable. The Manual provides that the compensation of coaches is the least important factor to examine in making compliance determinations regarding coaching. As stated above, the Policy Interpretation provides that the equitability of the compensation of coaches for girls' and boys' teams is determined by comparing girls' and boys' coaches in terms of: (1) the 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 This exclusion is because of the greater use and number of assistant coaches for football teams is the result of the nondiscriminatory factors listed in the Policy Interpretation and discussed above, that is, the rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of the facilities required for competition, and the maintenance and upkeep requirements of those facilities, as well as the high number of participants.

The Policy Interpretation also provides that any differences should be reviewed to determine whether they are the result of nondiscriminatory factors such as: the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, the level of competition, or whether a particular individual possesses such an outstanding record of achievement as to justify an abnormally high salary. The Manual indicates that the equitability of coaching compensation is determined by comparing the salaries and/or supplements of head and assistant coaches for the boys’ and girls’ programs, and the percentage of coaching funds available to the boys’ and girls’ programs – these percentages should correspond to the proportion of male to female participants in the athletics program.

The rate at which School coaches are paid is determined by referring to the District’s “Athletic Supplement Schedule.” OCR reviewed the compensation information and determined the supplement range for coaches of each team for each sport and the total compensation actually paid per sport. OCR analyzed the supplemental levels for coaches of comparable girls’ and boys’ sports as well as the supplemental levels for the “non-comparable” sports of girls’ volleyball, boys’ wrestling, and football (see Table 1).

TABLE 1²

2013-2014 High School Athletics Supplements			
Program	Season	Pre-Season	Total (Season+Pre-season)
Trainer - Certified; First Responder	9,213	1,920	11,133
Varsity Football	17,225	5,760	22,985
Varsity Men's Soccer	3,675	1,920	5,595
J.V. Men's Soccer	1,425	960	2,385
Varsity Men's Basketball	5,450		5,450
J.V. Men's Basketball	1,875		1,875
Wrestling	3,975		3,975
Varsity Baseball	4,238		4,238
J.V. Baseball	1,538		1,538
Men's Track	3,863		3,863
Men's Tennis	1,750		1,750
Men's Golf	1,538		1,538
Men's Lacrosse	3,301		3,301
Varsity Volleyball	2,000	400	2,400
J.V. Volleyball	1,400	400	1,800

² The highlighted sports (as well as the funds allocated to trainer and first responder services) indicate funds that apply to both male and female students who form part of one team and as a result OCR did not include them in its analysis.

2013-2014 High School Athletics Supplements			
Program	Season	Pre-Season	Total (Season+Pre-season)
Cross Country	2,638	800	3,438
Women's Tennis	1,750	400	2,150
Varsity Women's Basketball	5,450		5,450
J.V. Women's Basketball	1,875		1,875
Swimming	3,163		3,163
Indoor Track	1,325		1,325
Varsity Softball	4,238		4,238
J.V. Softball	1,538		1,538
Women's Track	3,863		3,863
Varsity Women's Soccer	3,675		3,675
J.V. Women's Soccer	1,425		1,425
Women's Golf	1,538	400	1,938
Women's Lacrosse	3,301		3,301
Bowling	500		500
TOTAL: Men's Sports			54,255
TOTAL: Men's Sports (excluding football)			31,270
TOTAL: Women's Sports			33,653
TOTAL: Overall (excluding football)			64,923
TOTAL: Overall (including football)			87,908

The only significant discrepancy is between the “non-comparable” sport of football and all other sports, as the Varsity (V) and Junior Varsity (JV) head and assistant football coaches are paid substantially more than those for any other sports. Although this difference is significant, we find that it does not raise compliance concerns because it is the result of the nondiscriminatory factors listed above in the Policy Interpretation and discussed in OCR’s analysis of football in the “Opportunity to Receive Coaching” section. Specifically, the Athletic Director (AD) explained that the difference in funding is due to the combination of several factors, including: the length of the season - all fall sports begin August 1st, but football is the last to finish regular season and playoffs, the number of participants (70-150 both JV and varsity in any given year), the fact that there are not separate JV and varsity coaches as there are in other sports, requiring the same coaches to coach both teams, the total work hours (football coaches generally invest a lot more time when you consider things like coaches meetings, player meetings to review game film, care for uniforms, and field prep). Counsel for the District also noted that football supplements take into account the elevated rates of injury resulting from participation, nature of the facilities required for competition, and the maintenance and upkeep requirements of those facilities. Counsel also reiterated the impact of the high number of participants and increased responsibility for coaches on funding allocation. OCR finds that all of these factors justify the higher rate of compensation for coaches.

We now look to the second factor the Manual identifies for determining whether coaching compensation is equitable: whether the percentage of coaching funds made available to the boys' and girls' programs for the 2013-2014 school year correspond to the proportion of male and female participants in the athletics program.

For the 2013-2014 school year, about 57% (191/335)³ of the participants in the School's athletics program (excluding football) were male and about 48% (162/335) were female. For this same period, 48% (\$31,270/\$64,923) of the coaching funds (excluding football) went to the boys' athletics program and 52% (\$33,653/\$64,923) to the girls' athletics program. When the football numbers are included, the male participants make up about 68% of the total number of student athletes (282/412) and the boys' athletics program receives about 62% of the coaching funds (\$54,255/\$87,908) -- a negligible difference. OCR determined that while these minimal variations identify a disparity in funding in favor of the girls' program, when viewed along with the equal opportunities for male and female athletes to receive coaching, as discussed above, these variations are not significant enough to raise compliance concerns. Additionally, OCR's review of the coaching supplements as applied to coaches of both sexes finds that the difference in funding impacts both male and female coaches within each program and is therefore not discriminatory in favor of one sex over the other as it relates to the coaches themselves. OCR also reviewed the experience of individual coaches by reviewing the number of years in coaching, clinics/trainings attended, and licenses held and found no evidence of disparities between boys' and girls' team coaches that would amount to a violation of Title IX.

The remaining factors in the Policy Interpretation concerning the equitability of the compensation of coaches for girls' and boys' teams are the duration of contracts; conditions relating to contract renewal; nature of coaching duties performed; working conditions; and other terms and conditions of employment. We found no evidence of significant disparities with respect to these factors; e.g., with respect to contracts, OCR determined that the District does not provide coaches with contracts beyond the supplements described above. Coaching appointments are "at will" appointments and do not place time or other requirements on the coaches either through contract terms or other means. Moreover, OCR's review found no concerns with the nature of the coaching duties performed by coaches in comparable sports, the working conditions of coaches, or the terms and conditions of employment with regards to the coaching factor in a Title IX athletics review, OCR's primary focus is the availability of coaches for athletes of the underrepresented sex. While coaching compensation is an important factor, it is the least important factor for OCR when determining compliance with Title IX in athletics.

Based on the above discussion, we find that there is insufficient evidence that the District has discriminated on the basis of sex against girls by failing to provide them with equitable opportunities to receive coaching, or in the assignment or compensation of coaches for girls' teams.

Allegation 1b: Scheduling of Games

³ As with the table above, OCR's analysis excludes sports where both male and female students participate on the same team (e.g. swimming, track, cross country, and bowling).

The Policy Interpretation indicates that the District's compliance with Title IX with respect to its scheduling of games be assessed by examining, among other factors, the equivalence for boys and girls of: the number of competitive events per sport; the time of day competitive events are scheduled; practice times; and the opportunities to engage in available pre-season and post-season competition.

Our review of the boys' and girls' teams' competitive schedules for the 2013-2014 school year revealed that, on each occasion when the boys' and girls' JV and Varsity basketball teams played the same opponent on the same evening, the girls' game was played in the earlier time slot. Both teams engaged in the same number of competitive events, and practice times were alternated throughout the week by agreement of the coaches. Both programs also engaged in pre and post season competition as well as summer practices and weight training.

During interviews, the girls' varsity basketball coach and the School's athletic director explained that the schedule of games within their region is set by the Piedmont Triad 4A conference bylaws, in accordance with the North Carolina High School Athletic Association. Both the coach and the athletic director indicated that the student athletes on the girls' teams preferred playing in the earlier timeslots. However, the athletic director and the coach both noted that the issue of alternating playing times had been discussed at the conference meetings and that neither of them would be opposed to doing so.

We find that male and female athletes are provided equal opportunity with respect to the number of competitive events they participate in, as well as the practice times and opportunities for post-season and pre-season competition. Male and female athletes are not provided equal treatment, however, with respect to the scheduled times for games. The Complainant told OCR that his family is not able to watch the girls' Varsity team play because of the earlier start time. The girls' basketball coach noted in his interview with OCR that there had been a discussion among coaches in the district regarding alternating game times and that the school would not be opposed to it. This sentiment was echoed by the AD who also noted that the coaches have grown accustomed to the schedule and enjoy getting home early (for the girls' coaches) and spending quality time with family in the afternoon (for the boys' coaches). Because the boys' basketball games are exclusively played in the later, "prime," time slot, we find that the times that competitive events are scheduled for boys' and girls' teams are not comparable. Therefore, OCR finds that there is sufficient evidence to substantiate the allegation that the School is in violation of the regulation implementing Title IX at 34 C.F.R. Section 106.41(c)(3). The District has entered into the attached agreement with OCR, which, when fully implemented, would resolve the compliance concerns identified during OCR's investigation.

Allegation 2: Retaliation

When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the School took a materially adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR

then determines whether the School has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the School's reason for its action is a pretext, or excuse, for unlawful retaliation.

The Complainant alleged that the Student was removed from the girls' basketball team on XXXX, after she requested a meeting with the principal to discuss concerns with the quality of the coaching the girls' basketball team was receiving. When OCR staff interviewed the girls' basketball coach and the AD, both indicated that the Student was not cut from the team, but rather quit. Both also indicated that while they were aware that the Student requested a meeting with the principal, they were unaware of the reason for the meeting or what the Student or her parents planned to discuss. The Complainant told OCR that he instructed the Student to refrain from participating in any practices or games until a meeting with the principal was scheduled. The coach confirmed that the Student communicated to him that she would not be attending practices or games until the meeting with the principal took place. The coach noted that he told the Student that meetings with the principal were out of his control and that she should "do what she needed to do."

Even if OCR were to consider the Student's plans to meet with the principal sufficient to find that she engaged in a protected activity, OCR has been unable to corroborate the allegation that the Student was cut from the team as a result of her request. Both the coach and the AD stated that the Student was never cut, but instead quit. The Complainant himself admitted that he instructed the Student to cease all sports related activities pending a meeting with the principal. The coach noted that the Student never returned to practice. OCR requested that the Complainant provide any evidence of the Student's dismissal from the team, but as of the date of this letter, no such evidence has been received by OCR. The Complainant noted that a text message relating to the dismissal was no longer in his possession. Because OCR cannot confirm that the School subjected the Student to an adverse action, OCR is unable to establish a prima facie case of retaliation. Therefore, OCR finds insufficient evidence to substantiate the allegation that the School retaliated against the Student.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District'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 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

If you have any questions regarding this complaint, please contact Sebastian Amar, at (202) 453-6023 or sebastian.amar@ed.gov; or Dale Rhines, at (202) 453-5924 or dale.rhines@ed.gov.

Sincerely,

/S/
Dale Rhines
Program Manager
District of Columbia Office
Office for Civil Rights