



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620  
DALLAS, TX 75201-6810

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

MAR 03 2014

Ref: 06131199

Dear

This letter is to notify you of the resolution of the above-referenced complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, investigated against the Longview Independent School District (LISD) in Longview, Texas. You alleged that the LISD discriminated against female athletes at Longview High School (LHS) based on sex. Specifically, you alleged that the LISD discriminated based on sex when it:

1. Failed to accommodate the athletic interests and abilities of female students;
2. Failed to provide equipment and supplies to females athletes on an equal basis to that of male athletes;
3. Failed to provide female athletes with equal locker rooms, practice and competitive facilities to those of male athletes;
4. Provided more coaches with greater compensation for male teams compared to female teams;
5. Failed to pay coaches of female teams additional money for "extra duties" (i.e. driving a school bus to/from competitions) as opposed to coaches of male teams; and
6. Assigned coaches of male teams fewer class periods to teach compared to coaches of female teams.

This agency is responsible for determining whether entities that receive or benefit from federal financial assistance from the Department, or an agency that has delegated investigative authority to this 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 (2012), which prohibit discrimination on the basis of sex. The LISD is a recipient of federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title IX.

OCR investigated the following issue:

Whether the LISD failed to provide equal athletic opportunity to female students in interscholastic athletics at Longview High School (LHS) regarding: (1) accommodation of athletic interests and abilities; (2) equipment and supplies; (3)

*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 opportunity to receive coaching and the assignment and compensation of coaches; and (4) locker rooms, practice and competitive facilities, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.41(c).

Prior to the conclusion of OCR's investigation and before OCR made a finding regarding whether the District was in compliance with Title IX, the District requested to resolve the complaint. The following is a statement of the applicable regulations and legal standards and a summary of the information obtained to date regarding OCR's investigation of the LISD's athletic program. The District submitted the enclosed Resolution Agreement on February 5, 2014, which addresses OCR's compliance concerns.

### **Issue 1: Accommodation of Athletic Interests and Abilities**

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a) states generally that "no person shall on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient [of Federal financial assistance], and no recipient shall provide any such athletics separately on such basis."

OCR determines whether a recipient provides male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The implementing regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity.

In addition to language from the regulation, OCR also uses as a mean of assessing compliance guidance provided in the "Intercollegiate Athletics Policy Interpretation," issued December 11, 1979, (Policy Interpretation); the Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test, issued on January 16, 1996; and the Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three, issued on April 20, 2010.

OCR examined whether LISD provided boys and girls an equal opportunity to participate in its interscholastic athletics program at LHS by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1). OCR used the "Three-Part Test" to determine whether LISD provides equal opportunities to participate in its intercollegiate athletic program. The "Three-Part Test" involves consideration of the following three questions:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments (Part 1);

- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of that sex (Part 2); or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion, such as that cited above, whether it can be demonstrated that the interest and abilities of the members of that sex have been fully and effectively accommodated by the present program (Part 3).

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.

The LISD provided OCR with information regarding student enrollment and athletic participation during the 2012-13 school year. OCR's initial review of the LISD's data indicated the number of athletic participants at LHS were as follows:

<b>Boys' Teams</b>	<b>Participants</b>
Baseball	38
Basketball	30
Track/Cross Country	25
Football	201
Golf	11
Powerlifting	39
Soccer	42
Swimming	15
Tennis	22
<b>Total Participation:</b>	<b>423</b>

<b>Girls' Teams</b>	<b>Participants</b>
Basketball	35
Track/Cross Country	25
Golf	9
Soccer	32
Softball	38
Swimming	15
Tennis	18
Volleyball	36
<b>Total Participation:</b>	<b>208</b>

According to the District, the enrollment at LHS for 2012-13 was 1924 students. Female students comprised 49.9% of overall enrollment, but were only 33% of the overall athletic participants. Comparatively, male students comprised 50.1% of overall enrollment and 67% of overall athletic participants. Thus, there was a 17% disparity

between overall female enrollment and female athletic participants, representing a total of 213 athletic opportunities needed for female students to achieve proportionality. Therefore, the number of opportunities that would be required to achieve proportionality would be sufficient to sustain a viable team, *i.e.*, a team for which there is a sufficient number of interested and able students and enough available competition to sustain a team.

OCR's review of LISD's data indicates that the LHS athletic program offers 10 athletic teams for boys and 10 athletic teams for girls. The boys' sports are football, basketball, baseball, track, soccer, golf, tennis, swimming, cross country, and powerlifting. The girls' sports are basketball, softball, track, volleyball, soccer, tennis, golf, swimming, cross-country, and powerlifting.<sup>1</sup> OCR's review of the LISD's history regarding the above teams, and any teams that were discontinued during the course of LHS's athletic program's history, indicates that the LISD has not added a girls' athletic team in twenty years. OCR's initial review of the LISD's data indicates that it has no written policy, procedures, or documentation regarding gauging student interests and abilities in extra-curricular sports.

## **Issue 2: Equipment and Supplies**

Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and minor conditioning and weight training equipment. In assessing compliance in this area, OCR considers the quality, amount, suitability, and availability of equipment and supplies and the maintenance and replacement policies and practices of the institution regarding equipment and supplies.

On April 8-10, 2013, OCR conducted an initial inspection of the LHS's equipment and supplies for each of the above-referenced teams to address their quality, amount, suitability and availability and their maintenance and replacement by the LISD. Prior to the conclusion of OCR's investigation and before OCR made a finding regarding whether the District was in compliance with Title IX, the District requested to resolve the complaint.

## **Issue 3: Opportunity to receive coaching and assignment and compensation of coaches**

The Policy Interpretation lists 3 factors to be considered in determining compliance for the opportunity to receive coaching: relative availability of full-time coaches; relative availability of part-time and assistant coaches; and relative availability of graduate assistants. OCR's initial review of the LISD data indicated the following breakdown of

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<sup>1</sup>LISD indicated that powerlifting was offered to female students but no females students signed up for the team. Thus, the powerlifting team was comprised entirely of male students in 2012-13.

the coaching staff for LHS teams, excluding combined teams,<sup>2</sup> during the 2012-13 school year:

Boys' Teams

Football: 1 head/9 assistants  
Basketball: 1 head/4 assistants  
Baseball: 1 head/3 assistants  
Soccer: 1 head/1 assistant  
Powerlifting: 1 head/3 assistants

Girls' Teams

Volleyball: 1 head/2 assistants  
Basketball: 1 head/2 assistants  
Softball: 1 head/2 assistants  
Soccer: 1 head/1 assistants

For the 2012-13 school year, LISD employed 36 coaches, of which 25 coached boys' sports and 11 coached girls' sports. OCR's review found that several individuals held dual, or triple, coaching assignments in one or more sports. The LISD does not employ part-time coaches or graduate coaches. The total number of participants in boys' sports was 339 with 25 coaching positions for a ratio of 13.5 male athletes for every 1 coach. The total number of participants in girls' sports was 132 with 11 coaching positions for a ratio of 12 female athletes for every 1 coach.

OCR's Policy Interpretation lists two factors to be assessed in determining compliance for the assignment of coaches: (1) training, experience, and other professional qualifications; and (2) professional standing.

OCR's initial review of the LISD data indicated that LHS coaches hold at a minimum a bachelor's degree and are certified teachers. A review of the contracts for each coach indicates they are "Dual Assignment Term Contracts" in a "Certified Professional Position" as a teacher and coach. Generally, LHS coaches received a stipend for their coaching duties. OCR's review indicated that stipends are paid for duties performed in addition to the primary purpose of employment: teaching.

**Issue 4: Provision of locker rooms, practice and competitive facilities**

The Policy Interpretation lists six factors to be assessed in determining compliance:

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.

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<sup>2</sup> OCR's initial review indicated that the boys' and girls' tennis, swimming, track and cross-country teams have the same coaching structure and practice and compete at the same or similar times and thus, are considered combined teams regarding Issue 3.

The LISD has designated the following practice and competitive facilities for LHS athletic teams:

- Lobo Coliseum (volleyball, basketball)
- Lobo Stadium (football, powerlifting, track, cross country, soccer)
- Baseball field (baseball)
- Softball field (softball)
- Tennis Courts (tennis)
- Pool (swimming)

OCR's initial review of the quality and availability of the facilities provided for practice and competitive events revealed that boys' and girls' teams use the same practice and competitive facilities referenced above, but the baseball and softball fields are used exclusively by those teams. The softball field is located on the LHS campus next to the football field. OCR's review indicated that the softball field has two covered benches that serve the purpose of home and visitors' dugouts. The softball field also has fences, a storage closet, an electronic scoreboard, and spectator capacity behind home plate. The softball field has covered batting cages down the left field line with concrete floors. There are no bathrooms at the softball field. OCR's review of the baseball field indicated that it has home and away dugouts, with six cubby holes, fifteen bat notches, twenty bat holders, a water fountain, bulletin and dry erase boards. The baseball field had four covered and carpeted batting cages down the left field line. It also had a bullpen protected by a wall down the left field line, and two practice mounds off the field down the left field line. The baseball field has a large press box above home plate which includes a sound system. The field also has a concessions building, where concessions are sold and bathrooms are available for players and spectators.

### **Resolution Agreement**

As noted above, prior to the conclusion of OCR's investigation and before OCR made a finding regarding whether the District was in compliance with Title IX, the District requested to resolve the complaint. On February 5, 2014, the District signed the enclosed voluntary Resolution Agreement (Agreement) which, when fully implemented, will resolve the complaint. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR's investigation, and are consistent with the applicable regulations.

The District has chosen to come into compliance with the applicable Title IX regulation by taking specific steps to demonstrate that the interests and abilities of female athletes are fully and effectively accommodated by its interscholastic athletics high school programs. Under the terms of the Agreement, the District will conduct a comprehensive assessment by September 30, 2014, to determine whether female students have unmet athletics interests. The assessment will include a survey of all high school and eighth grade female students. By November 1, 2014, the District is required to report to OCR on its assessment. OCR will notify the District of any deficiencies with respect to the District's implementation of the Agreement's requirements relating to the assessment, and work with the District to address these deficiencies. The District is also required to

report to OCR by January 1, 2015, if it concludes, through its assessment, that it is fully and effectively accommodating the athletic interests of its female high school students. Otherwise, the District will be obligated to offer additional athletic opportunities to female students. These steps are to be taken by the next competitive season for the particular sport, if possible, during the 2014-15 school year. Additional opportunities may include creating new sports teams for girls, adding levels to existing teams or increasing the squad size of existing teams. For any sport that is not currently offered by the District where there is a sufficient number of female students who have sufficient interest and, if applicable, ability in that sport, but where the District determines that there is not sufficient competition within the high school's normal competitive region, the District will take ongoing steps to develop students' interest and ability. These steps may include establishing club sports, exploring the feasibility of establishing competition in the District's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available. The District will also develop, implement and publicize a procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at the District's high school. The District will provide notice each year to students, coaches, and other District staff of all of the sports offered at the high school.

In addition, the District will conduct an assessment of its equipment and supplies, its students' opportunity to receive coaching, its assignment and compensation of coaches, and its locker rooms, practice and competitive facilities, and report to OCR any necessary modifications, upgrades, and improvements it plans by the end of the 2014-15 academic year to ensure it provides equal opportunities to boys and girls in the above-referenced areas at its high school.

OCR will monitor the implementation of the Agreement. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

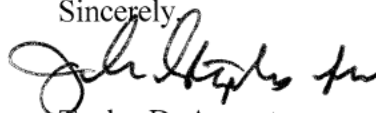
Based on the foregoing, and in accordance with OCR procedures, OCR is closing the investigation phase of this complaint effective the date of this letter. This letter is not intended, nor should it be construed, to cover any other matters that may exist or were not specifically discussed herein.

Under OCR procedures we are obligated to advise you and the institution against which a complaint is filed that intimidation or retaliation against the complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with a complaint.

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.

If you have any questions regarding this letter, please contact Timothy D. Caum, Attorney, at 214-661-9648, or Adriane P. Martin, General Supervisory Attorney/Team Leader, at 214-661-9600.

Sincerely,

A handwritten signature in black ink, appearing to read "Taylor D. August".

Taylor D. August  
Regional Director  
Dallas Office

Enclosure