



## U.S. DEPARTMENT OF EDUCATION

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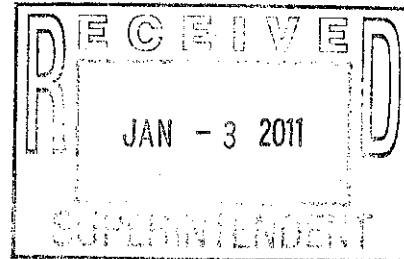
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OFFICE FOR CIVIL RIGHTS  
SOUTHERN DIVISION

DISTRICT OF COLUMBIA OFFICE  
District of Columbia, North Carolina, South Carolina, Virginia

December 17, 2010

Dr. Donna Hargens  
Superintendent  
Wake County Public Schools  
3600 Wake Forest Road  
Raleigh, North Carolina 27609



Re: OCR Complaint 11-11-1040

Dear Dr. Hargens:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has received and evaluated the above-referenced complaint filed with OCR on November 10, 2010, against Wake County Public Schools (District) alleging discrimination on the basis of sex. We conducted the evaluation in accordance with OCR's *Case Processing Manual* to determine whether to open the complaint for investigation. We have determined that we have the authority to investigate this complaint.

Specifically, the complaint alleges that the District subjects high school girls to discrimination on the basis of sex because the selection of interscholastic sports at the District's high schools does not effectively accommodate the interests and abilities of members of both sexes to the extent necessary to provide equal athletic opportunity.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (Title IX), and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Because OCR has determined that it has jurisdiction and that the complaint was filed timely, it is opening this complaint for investigation. Please note that opening the complaint for investigation in no way implies that OCR has made a determination with regard to its merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the complaint allegation, in accordance with the provisions of Article III of the *Case Processing Manual*, which is available on our website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

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

OCR offers, when appropriate, an Early Complaint Resolution (ECR) process to facilitate the voluntary resolution of complaints by providing an early opportunity for the parties involved to resolve the allegation(s). Some information about the ECR process is in the enclosure to this letter entitled “OCR Complaint Processing Procedures.”

When appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient expresses an interest to OCR to resolve the complaint. In such cases, a resolution agreement signed by the recipient and submitted to OCR must be aligned with the complaint allegation(s) and/or the information obtained during the investigation and it must be consistent with applicable regulations. Information about this resolution option is provided in the enclosure to this letter.

Please read the enclosed document entitled “OCR Complaint Processing Procedures,” which includes information about:

- OCR’s complaint processing procedures including the availability of ECR;
- Regulatory prohibitions against retaliation and intimidation of persons who file complaints with OCR or participate in an OCR investigation; and
- Application of the Freedom of Information Act and the Privacy Act to OCR investigations.

OCR intends to conduct a prompt investigation of this complaint. The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination. This requirement is incorporated by reference in the Title IX regulation at § 106.71. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii), of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

Accordingly, OCR is requesting that you forward to us within twenty (20) calendar days the following information:<sup>1</sup>

1. Provide the name, phone number and email address of the District’s Athletic Director, as well as the names, phone numbers and email addresses of each high school’s Athletic Director (or other contact person for matters pertaining to athletics at the individual high schools).
2. For each team at each high school, provide the name of each head coach and assistant coach, contact information for each coach, and any other position the coach holds within the District.

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<sup>1</sup> If information is not yet available, such as the participation counts and rosters for spring 2011 sports, then provide that information to OCR by April 15, 2011.

3. Provide a copy of any survey(s) of student interest and ability in athletic participation conducted District-wide or at the individual high schools in the last 10 years along with the reports of the results of the survey(s).
4. Indicate whether the District has conducted assessments of student interest and ability in interscholastic athletics District-wide or at any individual high schools, apart from any surveys referenced under item #2. If such assessments have been done, then please provide a description or copy of the assessment and a copy of the results of any assessments conducted over the last 10 years.
5. If the District has a published policy or procedure that is applicable District-wide or at any individual high schools under which students, parents or others may request that a sport or level be added or elevated to interscholastic status, provide a copy. Please indicate how the policy or procedure is communicated to students, parents and others, the date of such communication or publication and, if applicable, where the policy or procedure may be found on the District's website.<sup>2</sup>
6. Indicate whether there have been requests to the District during the last 10 years for the addition of a sport or team to interscholastic status or the elevation of a sport or team to interscholastic status District-wide or at individual high schools; specify which sport was requested to be elevated or added, indicate who made the request, and indicate what the District's response was to the request. If any such request was denied, include the reason for denial. Provide a copy of any documents that reflect or identify any such request to the District and the District's response, if any.
7. The student enrollment numbers, by sex, at each high school during the 2009-10 and 2010-11 school years.
8. Identify all sports, including any coed sports, which compete in each high school's interscholastic athletic program. Provide information about each level of competition within each sport. For example, for each sport, indicate (as appropriate) whether there is a Varsity team, a Junior Varsity team, Sophomore A, Sophomore B, Freshman A, Freshman B, etc.
9. Indicate whether each high school offers for both genders competition in all sports and levels of competition sanctioned by the North Carolina High School Association for the particular gender. If the high school does not offer all sports and levels of competition sanctioned by the North Carolina High School Association, please indicate why that is the case. Specify whether students of the underrepresented gender are offered interscholastic competition in lacrosse and indoor track. If interscholastic competition is not offered in lacrosse and indoor track, indicate why that is the case.
10. At each high school for each team, including all levels of competition, indicate the athletic conference in which the team competes.

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<sup>2</sup> If the policy or procedure is available on a District website, please provide the link to the website address.

11. At each high school for each team, including all levels of competition, indicate when the team began competing at the interscholastic level at the high school.
12. For the 2009-10 and 2010-11 school years, provide the number of participants as of the date of the first competitive event, by sex, on each level of each team at each high school and provide a copy of the rosters for each level of each team for the beginning of the competitive season; if applicable, provide the eligibility or squad lists for each level of each team. For co-ed teams, indicate the number of boys and girls on each team.
13. For the 2009-10 and 2010-11 school years, a list of each team at each high school that “cut” students from the team. For each such team, provide the number of students who tried out for the team, the number of students who were cut from the team and the reason(s) each student was cut.
14. For the 2009-10 and 2010-11 school years, provide a copy of the competitive schedule for each team at each high school.
15. A copy of any historical data, for school years prior to 2009-10, showing the participation rates for students of each sex in each sport offered at each high school. This data should include, for each high school, the number of students enrolled by sex, the number of student athletes in each sport by sex, the number of students who tried out for each team for each sport by sex and, of those, the number who were cut and the reasons each student was cut. For each high school, if any sports or levels of competition (e.g., freshman, junior varsity) have been dropped, added and/or reinstated in the past 20 years, provide information about which sports or levels of competition were dropped, added and/or reinstated, when the sports or levels of competition were dropped, added and/or reinstated and why the sports or levels of competition were dropped, added and/or reinstated at each high school.
16. For each team that was dropped within the last 10 years, please provide information about the number of male and female students who participated on the team in the year before it was dropped and the final year of its existence.
17. Provide a copy of the District’s plan of program expansion, if any, to respond to the developing interests and abilities of the underrepresented gender District-wide or at individual high schools, if such a plan exists. If no such plan exists, or if the District has a plan but no written documentation, please indicate.
18. Provide a list of club/intramural sports are offered in the District. If the District maintains participation records for club/intramural sports District-wide or at individual high schools, please provide the number of boys and girls who participated in each club/intramural sport during the 2009-10 and 2010-11 school years.
19. Identify any community based sports leagues, travel programs, amateur athletic associations, or other similar sports or leagues that are not offered by the District but operate in the District’s usual competitive region and list the sports in which such opportunities are available for high school age boys and girls.

20. If the District is aware of District students who participate in any community sports leagues, travel programs, amateur athletic associations, or other similar community based sports or leagues not offered by the District, then provide the number of boys and girls who participated in each such offering during the 2009-10 and 2010-11 school years.
21. If you wish, provide a narrative response to the complaint allegation with any other supporting documentation not specifically requested above.

You may wish to use the attached chart to document your answers to some of the items listed above.

Thank you for your cooperation in this matter. In addition to the information requested above, OCR will need to request additional information and interview pertinent personnel. If OCR determines that an on-site visit is necessary, we will contact you or your designee to schedule a mutually convenient time for the visit.

Please notify OCR of the name, address, and telephone number of the person who will serve as the District's contact person during the processing of this complaint. We would like to talk with this person as soon as possible regarding the information requested in this letter.

OCR is committed to prompt and effective service. If you have any questions, please contact me at 202-453-5924 or at Dale.Rhines@ed.gov.

Sincerely,



Dale Rhines  
Program Manager  
Office for Civil Rights  
Washington, DC Office

Enclosures

**ATTACHMENT 1**  
**Participation Rates by Sport/Level**

SCHOOL NAME:														
SPORT	For Boys?	Levels	For Girls?	Levels	# Boys Varsity	# Boys JV*	# Boys Soph*	# Boys Frosh*	Total Boys	# Girls Varsity	# Girls JV*	# Girls Soph*	# Girls Frosh*	Total Girls
Badminton		V J S F		V J S F										
Baseball		V J S F		V J S F										
Basketball		V J S F		V J S F										
Bowling		V J S F		V J S F										
Crew/Rowing		V J S F		V J S F										
Cross Country		V J S F		V J S F										
Fencing		V J S F		V J S F										
Field Hockey		V J S F		V J S F										
Football		V J S F		V J S F										
Golf		V J S F		V J S F										
Gymnastics		V J S F		V J S F										
Ice Hockey		V J S F		V J S F										
Lacrosse		V J S F		V J S F										
Rugby		V J S F		V J S F										
Skiing		V J S F		V J S F										
Soccer		V J S F		V J S F										
Softball		V J S F		V J S F										
Swim/Diving		V J S F		V J S F										
Tennis		V J S F		V J S F										
Track/Field (In)		V J S F		V J S F										
Track/Field (out)		V J S F		V J S F										
Volleyball		V J S F		V J S F										
Water Polo		V J S F		V J S F										
Wrestling		V J S F		V J S F										

\*Please note if there is a split squad at any level, e.g. Freshman A and B, Sophomore A and B, Junior Varsity A and B, etc.

## **OCR COMPLAINT PROCESSING PROCEDURES**

### **LAWS ENFORCED BY OCR**

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

### **EVALUATION OF THE COMPLAINT**

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory.<sup>1</sup> If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR's request for information.

OCR will dismiss a complaint if OCR determines that:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;

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<sup>1</sup> Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.

- The complaint was not filed timely and that a waiver will not be granted;
- The complaint is unclear or incomplete and the complainant does not provide the information that OCR requests within 20 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;
- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution meets OCR regulatory standards or, if still pending, OCR anticipates that there will be a comparable resolution process under comparable legal standards;
- The same allegations have been filed by the complainant against the same recipient in state or Federal court;
- The allegations are foreclosed by previous decisions of the Federal courts, the U.S. Secretary of Education, the U.S. Department of Education's Civil Rights Reviewing Authority, or OCR policy determinations.

### **OPENING THE COMPLAINT FOR INVESTIGATION**

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

### **INVESTIGATION OF THE COMPLAINT**

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings issued by OCR address individual OCR cases. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. 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.



## **RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLIANCE**

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution agreement to verify that the remedial actions agreed to by the recipient have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 30 days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for a finding noncompliance.

If, after the issuance of the Letter of Finding of noncompliance, the recipient continues to refuse to negotiate a resolution agreement with OCR, OCR will issue a Letter of Impending Enforcement Action and will again attempt to obtain voluntary compliance. If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

## **RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION**

### **Early Complaint Resolution (ECR):**

Early Complaint Resolution allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that Early Complaint Resolution is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. To the extent possible, staff assigned by OCR to facilitate the Early Complaint Resolution process will not be the staff assigned to the investigation of the complaint. OCR does not approve, sign or endorse any agreement reached between the parties as a result of Early Complaint Resolution, and OCR does not monitor the agreement. However, if the recipient institution does not comply with the terms of the agreement, the

complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later.

### **Resolution of the Complaint Prior To the Conclusion of an Investigation**

A complaint may also be resolved before the conclusion of an investigation, if the recipient expresses an interest in resolving the complaint. If OCR determines that resolution of the complaint before the conclusion of an investigation is appropriate, OCR will attempt to negotiate an agreement with the recipient. OCR will notify the complainant of the recipient's request and will keep the complainant informed throughout all stages of the resolution process. The provisions of the resolution agreement that is reached must be aligned with the complaint allegations and the information obtained during the investigation, and must be consistent with applicable regulations. A resolution agreement reached before the conclusion of an investigation will be monitored by OCR.

### **REQUEST FOR RECONSIDERATION OR APPEAL OF OCR'S DETERMINATIONS**

OCR is committed to a high quality resolution of every case. OCR affords an opportunity to the complainant to submit a request for reconsideration or an appeal of OCR determinations that are not in the complainant's favor. If the complainant disagrees with OCR's decision to dismiss or administratively close a complaint for any reason (e.g., jurisdiction, timeliness, other administrative reasons), he or she may send a written request for reconsideration to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's dismissal or administrative closure letter. If the complainant disagrees with an OCR decision finding insufficient evidence to support the complaint allegation(s) after investigation, he or she may send a written appeal to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's letter of finding(s). Requests for reconsideration and appeals should be sent to:

Deputy Assistant Secretary for Enforcement  
Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-1100

This review process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision. For both requests for reconsideration and appeals, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change OCR's determination in the case. Failure to do so may result in the denial of the request for reconsideration or appeal. The review process will not be a *de novo* review (i.e., OCR will not review the matter as if no previous decision had been rendered) of OCR's decision.

## **ADDITIONAL INFORMATION**

### **Right to File a Separate Court Action**

The complainant may have the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

- 1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no finding; or
- 2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the complainant and will provide additional information about the right to file for injunctive relief.

### **Prohibition against Intimidation or Retaliation**

An institution under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

### **Investigatory Use of Personal Information**

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records. No law requires anyone to give personal information to OCR and no formal sanctions will be imposed on complainants or other persons who do not cooperate in providing information during the complaint investigation or resolution process. However, if OCR is unable to obtain the information necessary to investigate a complaint, we may have to close the complaint.

The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information that is submitted to all Federal agencies and their individual components, including OCR. The Privacy Act of 1974 protects individuals from the misuse of personal information held by the Federal government. It applies to records that are maintained by the government that are retrieved by the individual's name, social security number, or other personal identifier. It regulates the collection, maintenance, use and dissemination of certain personal information in the files of Federal agencies.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used only for authorized civil rights compliance and enforcement activities. However, in order to investigate or resolve a complaint, OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such details could include the age or physical condition of a complainant. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. OCR will not release any information to any other agency or individual except in the one of the 11 instances defined in the Department's regulation at 34 C.F.R. § 5b.9(b).

OCR does not reveal the name or other identifying information about an individual unless it is necessary for completion of an investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the FOIA or the Privacy Act. OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the FOIA, the Privacy Act or otherwise by law.

FOIA gives the public the right of access to records and files of Federal agencies. Individuals may obtain items from many categories of records of the Federal government, not just materials that apply to them personally. OCR must honor requests for records under FOIA, with some exceptions. Generally, OCR is not required to release documents during the case evaluation and investigation process or enforcement proceedings, if the release could affect the ability of OCR to do its job. 5 U.S.C. § 552(b)(7)(A). Also, a Federal agency may refuse a request for records if their release would result in an unwarranted invasion of privacy of an individual. 5 U.S.C. § 552(b)(6) and (7)(C). Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.