

RANDS Solutions

WRITTEN DETERMINATION

This document is a Written Determination for Cape Henlopen School District related to a formal complaint of a violation of Title IX. Board Policy 116-Title IX/OCR Compliance Procedures were the guiding document for the submission of the complaint by an anonymous party. Michael Connors, CHSD Assistant Athletic Director was the investigator, and the respondents for the district were Kevin Smith, CHSD Athletic Director, and Dave Frederick, Principal of FTMS.

Allegation:

The allegations of the complainant are related to the facilities for girls' sports, namely field hockey and softball, being viewed as inadequate due to location and access to privacy. In addition, there are equality concerns with the softball and baseball facilities, as well as the equal access for girls' sports to training facilities, locker rooms, and fields.

District's Policy Violation:

Under consideration is a sexual discrimination claim pursuant to Cape Henlopen School District's Board Policy 116-Title IX/OCR and its implementing of 34 CFR § 106.41 Athletics.

- a) General. 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.
- b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.
- c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:
 - 1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
 - 2) The provision of equipment and supplies;
 - 3) Scheduling of games and practice time;
 - 4) Travel and per diem allowance;

- 5) Opportunity to receive coaching and academic tutoring;
- 6) Assignment and compensation of coaches and tutors;
- 7) Provision of locker rooms, practice and competitive facilities;
- 8) Provision of medical and training facilities and services;
- 9) Provision of housing and dining facilities and services;
- 10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

District's Procedural Steps:

Below are the District's procedural steps during the investigation:

- March 17, 2024 - Complaint was filed.
- March 18, 2024 - Technology Department of Cape was contacted by the Title IX Coordinator to determine the validity of the complaint/email address. The complaint was submitted via an email address that did not match any families (past or present) from the Cape Henlopen School District. It was from, [REDACTED] a person named [REDACTED]
- March 21, 2024 - Legal counsel was consulted to determine the best path forward to address this complaint. It was determined that an anonymous complaint can be made but it limits the District's ability to investigate because the complainant is not available.
- March 26, 2024 - Michael Connors was assigned as the Investigator.
- April 12, 2024 – The Notice of Title IX Formal Complaint was sent to the parties involved.
- April 15, 2024 – Katharine Austin, Coach of the Girls Hockey Team, was interviewed.
- April 16, 2024 – Kevin Smith, CHSD Athletic Director, and Dave Frederick, Principal of FTMS, were interviewed.
- April 19, 2024 - The Title IX Coordinator explored the possibility of resolving the issue through an informal resolution process. The Coordinator was not able to find guidance on offering an informal resolution for an anonymous complaint. Since the complainant wanted to remain anonymous, and written voluntary consent was needed to proceed with the informal process, this avenue was not explored any further.
- April 30, 2024 - The Investigative Report was finalized (1st Draft) and sent to the parties involved for preview for 10 days.

- May 6, 2024 - All feedback was received.
- May 6, 2024 - Ned Gladfelter, CHSD's Title IX Coordinator, sent the finalized Investigative Report to Josette Tucker, Ed.D., who is serving as the Decision Maker.

Evidence/Findings of Fact:

The evidence has been reviewed and the facts pertinent to this complaint are listed below:

Based on the two weight room schedules provided, it appears that just over half the sports teams were assigned time in one of the two weight room in the fall and winter. One of the weight rooms is newer than the other. The football team was assigned 1-2 75-minute time slots in the Pole Barn weight room exclusively, which is the newer weight room. Only two girls' sports (field hockey and lacrosse) were assigned times in the Pole Barn weight room, the newer of the two weight rooms, from November 6, 2023 – January 8, 2024.

Several places were mentioned in the investigative report where the female student athletes could change their clothes (fieldhouse, weight room, and locker room).

The baseball team has a covered batting cage that was constructed in 2014. The purpose of the covered batting cage was to prevent the turf and baseball equipment from being damaged in the off season due to the weather conditions. The baseball team utilizes a clubhouse that was constructed in 2022. The clubhouse can accommodate 40 student athletes and 7 coaches and is used to facilitate game strategy discussions. The clubhouse has a garage area to store field landscaping and baseball equipment, bathrooms, and a locker room. The baseball field has well positioned bleachers that could safely accommodate fans during a baseball game.

The softball team utilizes a typical size dugout that more likely than not, could comfortably accommodate 13-15 people. The softball team's batting cage has turf, but is not covered. The investigative report states softball is the next sport that would need facility upgrades, such as a clubhouse, covered batting cage, replacement dugouts, and repositioning of bleachers to help with the fan experience.

Based on the varsity sports schedule posted on CapeVikingsSports.com for 2022/2023 and 2023/2024 when reviewing game field assignment for boys' athletic teams (football, lacrosse, and soccer) and girls' athletic teams (field hockey, lacrosse, and soccer), it appears approximately 95% of the games for the boys' teams were played on the Legends Stadium with approximately 28% of the girls' teams being assigned to the Legends Stadium. The approximately 28% is due to half of the girls' soccer team games in 2022/2023 being assigned to the Legends Stadium and the other to the Champions Stadium. In 2023/2024, with the exception of one game, the girls' soccer games were assigned to the Legends Stadium. Based on the posted schedule, it appears that all of the games for field hockey and the girls' lacrosse teams were assigned to the Champions Stadium during the 2022/2023 and 2023/2024 school years.

While the schedule is subject to change, it appears a similar pattern is currently planned for the 2024/2025 athletic season with the field hockey and girls' lacrosse teams being assigned to play their games on the Champions Stadium and the boys' athletic teams being assigned to play their games in the Legends Stadium.

Conclusions:

Based on the evidence in the investigative report, the fall and winter weight room schedules provided do not demonstrate an equal distribution of assignments across boys' and girls' athletic teams or the two different weight rooms. Based on recent schedules, girls have limited access to the newer weight room. While all coaches may not have requested to be placed on the schedule, at a minimum, cheerleading, golf, soccer, softball, swimming, tennis, track and field, and volleyball do not appear to be part of the weight room schedule.

The baseball team has received significant facility upgrades over the last 10 years, while similar updates were not made to the facilities for the softball team. Protection of the turf and equipment were provided as a rationale for the baseball team receiving a covered batting cage. It is more likely than not that the softball batting cage is in close proximity to the baseball batting cage. The softball batting cage has turf, and it would be subject to the same weather conditions that were a concern when the baseball team's covered batting cage was built in 2014.

The Champions Stadium is the location where girls' field hockey and lacrosse teams play their games. The Legends Stadium and the Champions Stadium are separated by a driveway leading to a parking lot that is used for both stadiums. The female players use the same locker room and bathrooms they would use if playing at the Legends Stadium. Research has been completed and underground thermal issues prevent the possibility of new construction closer to the Champions Stadium.

The complaint stated there was not equal access to the Legends and Champions Stadiums for girls' sports; however, there is a team preference for the field hockey and girls' lacrosse teams to play at the Champions Stadium due to the length of the turf. If the field hockey and girls' lacrosse teams played at the Legends Stadium, they would have access to a locker room and bathrooms that are closer to the playing field.

Determination of Responsibility Statement and Rationale:

In regard to Cape Henlopen School District's Board Policy 116-Title IX/OCR and its implementing of 34 CFR § 106.41, it has been determined that there are gender disparities within the Cape Henlopen School District's athletic program. The gender disparities are specifically when considering (c)2 - the provision of equipment and supplies and (c)7 - the provision of locker rooms, practice, and competitive facilities.

The evidence shows multiple locations were suggested as locations for female students to change their clothes instead of there being a consistent and assigned place to do so that is considered private. This is the responsibility of the district to provide equal opportunities to facilities.

The evidence shows female athletes do not have the same level of access to weight rooms or locker rooms. It is the responsibility of the district to provide equal opportunities to facilities.

The evidence shows a pattern of male teams playing on a field that has access to locker rooms and bathrooms within close proximity to the field, which is the Legends Stadium. It is the responsibility of the district to provide equal opportunities to facilities.

The evidence shows there is a large disparity between the baseball and softball facilities. The disparities include the baseball team having a covered batting cage, recently constructed

clubhouse with access to a changing facility, meeting space, bathrooms in close proximity to their playing field, and adequate fan seating. It is the responsibility of the district to provide equal equipment and supplies.

Disciplinary Sanctions:

Since the filing of this complaint, the district has developed a locker room usage schedule for the fall, winter, and spring sports seasons. Moving forward, the district shall continue to maintain a schedule for each sport throughout the year. The schedule shall be emailed to coaches at the start of each season, as well as being posted in prominent locations within the school and on the CapeVikingsSports.com website. Any coach who is not able to utilize the schedule, for any given reason, shall contact the Athletic Director via email to schedule a time to discuss the concern.

A similar rotation schedule to the locker room usage schedule shall be developed for the utilization of the weight rooms. Access shall be provided to male and female sports in an equal manner based on time and location. Any coach who is not able to utilize the schedule, for any given reason, shall contact the Athletic Director via email to schedule a time to discuss the concern.

Cape Henlopen School District requested funding from the residents living in their district through the referendum process authorized by the State. The referendum included funding to construct a building that would have provided additional locker room and bathroom facilities near the Pole Building. The residents in the district did not approve the request for funding through a vote. If approved by the State, the district should continue to seek financial support to construct this facility to aid in providing additional resources for female athletes. In addition, the district should also consider including funding to upgrade the softball facilities comparable to the baseball facilities.

As of the end of the 2023-2024 school year, Cape Henlopen School District asked student athletes to complete a survey assessing their experience in their specific sport. The questions were designed to assist the district in determining if there were any potential areas of growth as it relates to Title IX. The district should utilize legal counsel to assess and continue to refine the survey as it related to Title IX. As refinements are made, the district shall request each student athlete to complete the survey at the end of each season, instead of at the end of the school year. The data shall be compiled and maintained by the Title IX Coordinator or their designee. Annually the data shall be presented to the Cape Henlopen School Board and building leaders who have athletic teams in their building unless otherwise determined by the Board.

An anonymous party filed this complaint, so the Decision Maker is unable to determine if the remedies listed will impact the complainant; however, the remedies were established with the goal of positively impacting all student athletes in the Cape Henlopen School District.

Statement and Rationale for Remedies:

The remedies in this Written Decision are made in an effort to restore and preserve equal access, ensure parity and fairness while implementing measures that do not discriminate against any parties within or associated with the athletic programs in the Cape Henlopen School District.

Appeal Process:

In accordance with Cape Henlopen School District Board Policy 116 -- Title IX/OCR Compliance Procedures, the complainant or respondent may appeal the decision-maker's determination of responsibility or the dismissal of a formal complaint, to the Superintendent (or designee) within 10 calendar days of receiving the determination of responsibility or the notice of dismissal. The appeal decision-maker will not be the same individual who made the determination of responsibility, the investigator, or the Title IX Coordinator.

The following are permissible grounds for an appeal:

1. A procedural irregularity affected the outcome of the matter;
2. New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal; and/or
3. A conflict of interest on the part of the Title IX Coordinator, an investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome.

Decision Maker: Josette Tucker, Ed.D., RANDS Solutions, LLC Date: 6/7/2024