



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION, DALLAS OFFICERECEIVED IN
UIL OFFICE

MAY 16 2007

May 14, 2007

Dr. William Farney, Director
University Interscholastic League
P.O. Box 8028
Austin, TX 78713

Reference: 06061085

Dear Dr. Farney:

The U.S. Department of Education, Office for Civil Rights (OCR), Southern Division, Dallas Office has completed its investigation of a complaint, filed against the University Interscholastic League (UIL), Austin, Texas, which was received in our office on December 12, 2005. The complainant alleged that he was subjected to discrimination on the basis of his sex (male) by the application of a UIL rule, which prohibits boys from competing on girls' volleyball teams in interscholastic league contests.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex by a recipient of Federal financial assistance from the U.S. Department of Education (the Department). OCR has determined that the UIL is a "program or activity" of the University of Texas at Austin (UT), which is a direct 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 UIL's prohibition against boys competing on volleyball teams violates Title IX's requirement that a recipient provide equal athletic opportunities to members of both sexes.

Factual Analysis and Legal Determinations:**OCR Policy Considerations and Relevant Case Law**

According to the regulation implementing Title IX, when a recipient operates or sponsors a team in a particular sport for members of one sex but does not operate a team in that sport for the opposite 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 unless it is a contact sport.

Page 2 – Dr. William Farney, Director

Previously Limited Athletic Opportunities

OCR's inquiry focused on whether athletic opportunities have "previously been limited" for members of the excluded sex. 34 C.F.R. § 106.41(b). In this instance, OCR's analyzed whether athletic opportunities for boys have been previously limited in the State of Texas.

UIL's Constitution and Contest Rule:

The UIL constitution and a contest rule prohibit male students from competing on girls' volleyball teams as follows:

UIL stated that girls' volleyball was added as a UIL sport in 1967 as a vehicle to offer an additional competitive athletic opportunity for girls. The rule prohibiting boys from participating in girls' volleyball was adopted in 1967 as a means of ensuring that the newly added sport for girls would be what it was intended; an opportunity for more girls to participate in athletic competition.

At the time girls' volleyball was added as a UIL sport, the UIL provided only tennis and basketball to girls. That year, the UIL provided boys with track and field, tennis, football, basketball, baseball, and golf. Girls' volleyball was only the third girls' sport made available to UIL members. Had boys been allowed to compete in girls' volleyball, it would have displaced a female athlete from representing her school, and would have defeated the purpose of expanding the athletic opportunities that the UIL offered to girls. In addition allowing boys to compete on a girls' volleyball team would result in an unfair advantage to teams that included boys on their roster. Because of natural physical differences between boys and girls involving height, weight, and strength differences, teams with all girls would be unfairly disadvantaged when playing against teams that are made up of both boys and girls.

Since 1967, the UIL has added girls' competition in track and field, golf, swimming, cross-country, soccer, co-ed team tennis, softball and wrestling. Both volleyball and track and field were added prior to the passage of Title IX in 1973. Thus the UIL has a history of providing expanded athletic opportunities to girls even before Congress acted on the issue of disparity on athletics.

Under 34 C.F.R. 106.41(b), a recipient may operate a team in a particular sport for members of one sex but not for members of the other sex if the sport is a contact sport or if athletic opportunities for members of the excluded sex have not been previously limited.

The UIL contends that athletic opportunities for members of the sex excluded from volleyball (boys) have not been limited.

At present, the number of sports offered to girls and boys is even at twelve apiece. However, six of the sports offered to boys have been available since before 1950. From 1920 until 1951, only tennis was available to girls. Basketball was added in 1951, volleyball and track and field were added as options for girls before Title IX was passed in 1973. Opportunities for both sexes have been expanded over the years. Swimming for both boys and girls was added in 1970, cross

Page 3 -- Dr. William Farney, Director

country for boys in 1972, and for girls in 1975, soccer for boys and girls in 1983, team tennis for both sexes in 1984, softball for girls in 1993, and wrestling for both sexes was offered beginning in 1993.

Although the present number of UIL sports available to each sex is equal, it cannot be argued that opportunities for boys have been previously limited. Historically boys had more access to UIL sports than girls, and until softball for girls was added in 1993, the number of sports open to boys was greater than the number of sports open to girls. Although the opportunities for participation for girls have increased, the number of boys participating in UIL events has remained greater than the number of girls over the years.

Documentation provided by the UIL indicates that during the 2004-2005 academic year, 730,728 high school students participated in twenty-two (22) sports. The data shows that in the 2004-2005 scholastic year boy participants (446,121 - 61%) outnumbered girl participants (284,607 -- 39%). In comparison, a display of UIL participation statistics for the 1980-81 academic year reflects more than 259,000 boys participated in nine (9) sports. In 1985-1986, out of a total of 483,697 high school athletes, approximately 310,933 were boys and about 167,010 girls. These figures again demonstrate UIL's consistent progress in increasing the participation of both men and women in athletic competition leading to championships.

As a result of our analyses, OCR determined that there is insufficient evidence to support a finding of non-compliance with Title IX in regards to the complainant's allegation that he was subjected to discrimination on the basis of his sex (male) by the application of a UIL rule, which prohibits boys from competing on girls' volleyball teams in interscholastic league contests. Therefore, as of the date of this letter, this case is considered closed and no further action will be taken. This letter is not intended, nor should it be construed to cover any other matters regarding compliance with applicable statutes that may exist and are not specifically discussed herein.


Under OCR procedures, we are obligated to advise the complainant and the institution against which the complaint is filed that intimidation or retaliation against a 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 has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings 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.

Page 4 – Dr. William Farney, Director

If you have any questions or need to contact this office you may do so by calling Jack Washington at 214/661-9657 or me at 214/661-9608.

Sincerely,



Paul E. Cox
Supervisory Attorney
Dallas Office