

**U.S. DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
WASHINGTON, DC (METRO) OFFICE  
400 MARYLAND AVENUE, SW  
WASHINGTON, D.C. 20202-1475**

**ADMINISTRATIVE CLASS COMPLAINT**

**COMPLAINANT**

National Women's Law Center  
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The National Women's Law Center ("NWLC") is a non-profit organization that has been working since 1972 to expand the possibilities for women and girls at work, in school, and in their communities. The NWLC has a particular focus on the promotion of equal education opportunities through its work to ensure compliance with Title IX.

**RECIPIENT**

District of Columbia Public Schools  
1200 First Street, NE  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by the NWLC pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), and the regulations and policies promulgated thereunder. *See* 34 C.F.R. § 106 et seq. Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the District of Columbia Public Schools (the "District" or "DCPS") to the U.S. Department of Education pursuant to the Department's Civil Rights Data Collection ("CRDC") and through Freedom of Information Act requests indicate that the District is (1) not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test, and (2) not providing equal benefits and services to female athletes.
3. The disparities in participation opportunities and benefits/services are systemic and affect all schools in the District. District schools are interdependent in terms of requiring teams against which to compete and sharing limited facilities and other resources. Thus, in order to have a DCPS girls' program that is equal to the boys' program, all schools must ensure that they are providing girls with equal participation opportunities and benefits. For example:
  - a. Even if one school has a girls' team in a particular sport, that team will not have enough competition or diversity of competition to sustain its team unless the majority of schools in the District have equivalent girls' teams in that sport. This is the reason that both recreational and professional sports teams participate in leagues, which include sufficient numbers of other teams to provide the competition necessary to make the sport as a whole – and each team in it – viable. *Cf. Biediger v. Quinnipiac University*, 691 F.3d 85,

104 (2d Cir. 2012) (stating that playing against opponents at the same competitive level is one of the touchstones of a sports program).

- b. There are simply not enough facilities of sufficient quality among the District's schools for each boys' team and each girls' team to be able to practice and play on home facilities. In order to ensure equity overall in the area of facilities, therefore, the District must coordinate the use of facilities by all schools' teams to avoid disproportionately burdening players of one sex. Yet at schools with insufficient facilities, either there are no facilities for the girls' sports, or the boys' sports are routinely given preference, or both. Thus, DCPS is failing to comply with its Title IX obligation to ensure that girls are not disadvantaged by having to travel farther to practice and play their games
4. In order to address these systemic disparities, the NWLC requests that the Office for Civil Rights ("OCR") investigate all public high schools in the District to determine whether they are complying with Title IX and to remedy any unlawful conduct.

### **JURISDICTION**

5. OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.
6. The NWLC has not filed this complaint with any other agency or institution.
7. Given the ongoing nature of the problems documented, this complaint is timely.

### **FACTUAL ALLEGATIONS**

8. The District of Columbia Public Schools receive federal financial assistance, and the District is therefore prohibited from discriminating on the basis of sex by Title IX.
9. OCR collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection ("CRDC"). The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunities.

### **Title IX Coordinator**

10. The District does not provide students and employees with the name of its Title IX Coordinator, as required by 34 C.F.R. 106.8(a). The District's website, <http://dcps.dc.gov/portal/site/DCPS/>, contains a Notice of Nondiscrimination at the bottom that lists only an office to contact with any Title IX concerns. It is not clear whom, if anyone, the District has designated as its Title IX Coordinator. *See* <http://dcps.dc.gov/DCPS/Files/downloads/ABOUT%20DCPS/Human%20Resources/LMER/DCPS-LMER-NOD-English-4-12-10.pdf>.

### **Athletic Participation Opportunities**

11. District high schools do not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). According to data obtained from DCPS through a

Freedom of Information Act (“FOIA”) request, the average of the participation gaps (the difference between the percentage of students who are girls and the percentage of athletes who are girls) of the high schools in the District is 12 percentage points.

12. If the high schools in the District provided girls with opportunities substantially proportionate to enrollment, an additional 688 girls would be able to play sports.

13. More specifically, as the chart below and Attachment 1 illustrate, the majority of DCPS high schools have participation gaps of 10 percentage points or more. For example, Wilson High School reports a 19 percentage point gap between the percentage of girls enrolled (52.4%) and the percentage of athletes who are girls (33.6%). If Wilson High School provided girls with 52.4% of the athletic opportunities, an additional 125 girls would be able play sports.

**DCPS Participation Gaps**

**(percentage of students who are girls minus percentage of athletes who are girls)**

<b>School</b>	<b>Participation Gap</b>
ANACOSTIA SHS	6%
BALLOU SHS	26%
BANNEKER SHS	5%
BELL MULTICULTURAL SHS	7%
CARDOZO SHS	18%
COOLIDGE SHS	11%
DUNBAR SHS	6%
EASTERN SHS*	2%
MCKINLEY TECHNOLOGY HS	11%
PHELPS ACE HIGH SCHOOL	20%
ROOSEVELT SHS	26%
SCHOOL WITHOUT WALLS SHS	6%
SPINGARN SHS**	17%
WILSON W. SHS	19%
WOODSON H.D. SHS	10%

Source: DCPS data for 2010-11 school year obtained through FOIA request

\*Eastern High School housed only a senior class during 2010-11 due to renovations; thus, the participation data provided by DCPS is likely for the senior class only. See Timothy Wilson, *Eastern High School Restoration Draws Students, Alumni, Admirers*, Washington Post (Sept. 2, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/01/AR2010090102611.html>.

\*\*During the 2012-13 school year, DCPS announced that Spingarn would be closing. See Dorothy Rowley, *The End of an Era: Spingarn Senior High School Closes after 61 Years*, The Washington Informer (June 19, 2013), available at <http://washingtoninformer.com/news/2013/jun/19/end-era/>.

14. Data submitted by District high schools pursuant to the 2009 CRDC show similar disparities, although the CRDC collection is incomplete and two schools—Banneker and Bell—report that they have no athletics programs, despite the fact that the schools’ websites and data provided by DCPS indicate otherwise.
15. The District cannot demonstrate a history and continuing practice of program expansion (prong two). In response to a FOIA request, the District failed to provide any information to show a consistent record of adding female participation opportunities, a procedure for requesting the addition of sports, or a current plan of program expansion.
16. The District cannot demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three).
  - a. DCPS distributed athletic interest surveys to students at seven of the above high schools during the 2010-2011 school year. Even assuming that the methodology was appropriate, these surveys showed an overwhelming interest by girls in playing a variety of established varsity sports not offered by the District, such as swimming, tennis, and soccer. See Attachment 2. However, the District either does not provide these sports for girls or offers them at only a few schools.
  - b. There are several sports sanctioned by the District of Columbia Interscholastic Athletic Association (DCIAA) that are not offered to girls at many District high schools (e.g., softball, soccer, cross country, basketball), and there is no reason to believe that girls at DCPS high schools are any less interested in these sports than other girls in the District.
  - c. There are several thriving club and recreational leagues with widespread participation by girls in the District’s middle schools, thus demonstrating that there is significant interest among girls in participating in these sports.
    - i. Groups like the D.C. Stoddert Soccer League and D.C. Scores train hundreds of girls to play soccer every year. However, according to the District’s own data (see Attachment 1) and parents of female students in the District, only five high schools in the district have regularly fielded soccer teams, and sometimes it has been as few as three schools. See Attachment 1; Dave McKenna, *Dropping the Ball on Female Athletes*, Washington City Paper (August 27, 2010), available at <http://www.washingtoncitypaper.com/articles/39627/dropping-the-ball-on-female-athletes-dc-public-schools-may>.
    - ii. Winners Lacrosse, a nonprofit organization formed in 2000, has taught over 5,500 students in the District how to play lacrosse and provides opportunities to compete. In addition, the DCIAA recognizes lacrosse as a club sport. See

<http://dc.gov/DCPS/Beyond+the+Classroom/Athletics>. However, on information and belief, there is only one viable girls' varsity lacrosse team in the District—at Wilson High School—and it has been forced to fill its competition schedule by competing against teams from private schools in the District or public schools from other districts in the metro D.C. area. Lacrosse is one of the fastest growing sports in the nation, so there is no reason to believe that other girls in the District would be less interested in playing lacrosse, especially as scholarship opportunities grow at the college level. *See Citing Title IX, VCU to Add Women's Lacrosse in 2015-16*, The Baltimore Sun (February 15, 2013), available at <http://www.baltimoresun.com/sports/lacrosse-blog/bal-citing-title-ix-vcu-to-add-womens-lacrosse-in-2015-16-20130215,0,6985560.story>.

17. The lack of opportunities for girls in DCPS is well known and has been the subject of much media attention. For example, on the Kojo Nnamdi show in September 2011, Dave McKenna, the former sports columnist for the Washington City Paper, stated:

- a. "Women's programs are booming everywhere, women college athletes, so, you know, scholarships available to them are everywhere. And the D.C. kids don't even have a chance. You go to these schools like Roosevelt, which has a woman's -- a woman football coach. . . . But there are no sports available for the kids. There's no . . . girls' softball, there's no girls' soccer, you know, all these programs where scholarships are available." *See* <http://thekojonnamdishow.org/shows/2011-09-29/what-sports-say-about-state-dc-public-schools/transcript>.

## **Benefits and Services**

### *Coaching*

18. According to numerous parents with daughters who play sports in the District, girls' teams do not receive the same quality of coaching as boys' teams. Coaches of boys' teams typically have more knowledge of and experience in their sport when compared to coaches of girls' teams. Coaches of girls' teams also fail to expose female athletes to scouting opportunities and do not provide girls with the necessary information on NCAA academic requirements, which would help increase their chances of getting college athletic scholarships. For example:

- a. According to the head of the Sankofa Project (<http://sankofaproject.org/>), an advocacy group in DC that urges gender equity in the District's athletics program, only two DCPS schools have certified girls' basketball coaches: Woodson and McKinley.
- b. Based on information obtained from District parents, there are only three schools—Woodson, Coolidge, and Wilson—that have girls' basketball teams competing at a level comparable to their boys' teams, and only Woodson is sending any girls to college on athletic scholarships.
- c. In the championship game, a softball coach admitted that he did not understand the basic rules of the game that he was charged with coaching: "I don't know what the rules are as far as starting games in the rain, . . . I don't know the physics behind throwing a ball underhand in the rain. I played baseball. I'm doing this [coaching softball] for fun." *See* Steve Yanda, *School Without Walls Claims DCIAAA Contested Softball Crown*,

Washington Post (May 11, 2012), available at [http://articles.washingtonpost.com/2012-05-11/sports/35457654\\_1\\_dcps-umpire-protest](http://articles.washingtonpost.com/2012-05-11/sports/35457654_1_dcps-umpire-protest).

- d. Based on information provided by District parents, the vast majority of softball teams competing in the DCIAA softball league lack a coach who is able to teach them how to pitch in a “windmill” fashion necessary to be competitive in girls’ high school softball.
19. Girls’ teams have even been disbanded due to the District’s lack of attention to coaching for girls’ sports. For example:
- a. In 2010, Roosevelt High School canceled its girls’ basketball season after the head coach of eight years resigned and the new coach, who did not work at Roosevelt, did not have time to recruit players. The new coach admitted that “[i]t was kind of one of those deals where no one really recruited anyone to play.” The Roosevelt team had previously won the DCIAA championship twice, and advanced to the finals six times. See [http://voices.washingtonpost.com/prepspost-dc/2010/01/t\\_roosevelt\\_cancels\\_girls\\_hoop.html](http://voices.washingtonpost.com/prepspost-dc/2010/01/t_roosevelt_cancels_girls_hoop.html).
  - b. Based on information obtained from a District parent and soccer coach, Roosevelt also had a girls’ soccer team in 2001 and won the championship in 2002. That coach subsequently left the school, no one has been hired to replace her, and Roosevelt has not had a girls’ soccer team for all the years since.
20. By failing to provide girls’ teams with the same level of coaching as the boys’ teams, the District is denying girls equal opportunities to develop athletic skills and prepare for college-level competition.

#### *Travel and Related Expenses*

21. The District does not provide equal travel accommodations for female athletes. While male athletes travel to and from games or tournaments in chartered buses, parents report that female athletes often have been, and are required to provide their own transportation to away games.
- a. For example, an article in the Washington Post described that Dunbar’s football team was the only team to be provided with busing to another school for practice during the school’s renovations. See Eric Detweiler, *Dunbar track & field teams don’t let lack of a track slow them down*, Washington Post (May 29, 2013), available at [http://www.washingtonpost.com/sports/dunbar-track-and-field-teams-dont-let-lack-of-a-track-slow-them-down/2013/05/29/7a9b6552-c4f7-11e2-914f-a7aba60512a7\\_story.html](http://www.washingtonpost.com/sports/dunbar-track-and-field-teams-dont-let-lack-of-a-track-slow-them-down/2013/05/29/7a9b6552-c4f7-11e2-914f-a7aba60512a7_story.html).

#### *Practice and Playing Facilities and Locker Rooms*

22. The District does not treat female athletes equally with respect to practice and competitive facilities.
23. Female athletes often practice and play on fields that lack adequate lighting for playing at night, are poorly maintained, lack necessary provisions, and are not accessible by Metro. By comparison, male athletes practice and play on fields that are lit at night, well maintained, contain artificial turf, and are easily accessible by Metro. For example:

- a. Based on information provided by District parents, the boys' varsity and junior varsity baseball teams at Wilson High School practice and play on the baseball diamond adjacent to the school. The softball team, however, has no field located at the school. The girls "home" field is currently located at Upshur Recreation Center, over three miles away from the school. This is even farther away than their previous "home" field, Guy Mason Field, which was over two miles from Wilson High School. The softball team practices at Friendship Park, over one mile from the school.
- b. Based on information provided by District parents, the girls' soccer team at School Without Walls does not have its own field and has been using the field at Ellington High School for the past few years. The field has been poorly maintained and overused.

*Equipment, Supplies, and Uniforms*

24. The District does not treat female athletes equally in the provision of equipment, supplies, and uniforms.
25. While male athletes receive high quality uniforms, warm-up jackets, and sweat pants at no charge, female athletes often have to play in inferior, left-over, uniforms handed down from prior years. For example:
  - a. Based on information provided by District parents, female soccer athletes at School Without Walls have been forced to compete in uniforms with numbers that are affixed with duct tape.
  - b. Based on information provided by District parents, the girls' softball team at Wilson High School does not have a pitching machine or other training gear that the boys' varsity and junior varsity baseball teams have.
26. By failing to provide equal participation opportunities and equal benefits and services for its female high school students, the District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's academic success, health and well-being.
  - a. Young women who play sports are more likely to graduate from high school, have higher grades, and score higher on standardized tests than non-athletes.<sup>1</sup>
  - b. Young women who play sports have a lower risk of becoming obese or developing health problems such as heart disease and breast cancer.<sup>2</sup>

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<sup>1</sup> NFHS, *The Case for High School Activities* (2008), available at [http://www.nfhslearn.com/pdf/2008\\_case\\_for\\_highschool\\_activities.pdf](http://www.nfhslearn.com/pdf/2008_case_for_highschool_activities.pdf).

<sup>2</sup> Tara Parker-Pope, *As Girls Become Women, Sports Pay Dividends*, N.Y. Times, Feb. 16, 2010, at D5, available at <http://www.nytimes.com/2010/02/16/health/16well.htm> (last visited July 16, 2010); Robert Kaestner and Xin Xu, *Title IX, Girls' Sports Participation, and Adult Female Physical Activity and Weight*, 34 Eval. Rev. 52 (2010); see Sabo, D., Miller, K. E., Melnick, M. J. & Heywood, L., *Her Life Depends On It: Sport, Physical Activity, and the Health and Well-Being of American Girls* 52 (East Meadow, NY: Women's Sports Foundation, 2004); Dorothy Teegarden, et al., *Previous Physical Activity Relates to Bone Mineral in Young Woman*, 28 Medicine and Science in Sports and Exercise 105-13, Vol. 28 (1996); Leslie Bernstein et al., *Physical Exercise and Reduced Risk of Breast Cancer in Young Women*, Journal of the National Cancer Institute, Vol. 86, No. 18 (Sept. 21, 1994); Marilie D. Gamon, et al., *Does Physical Activity Reduce the Risk of Breast Cancer?*, Menopause, Vol. 3, No. 3, 172-80 (1996).

- c. Young women who play sports are less likely to smoke or use drugs, and have lower rates of both sexual activity and pregnancy.

27. In particular, the District's failure to provide equal athletic opportunities for its female students negatively affects girls of color. Of the girls enrolled at DCPS high schools, who collectively make up about half of the student body, 78% are African-American, 15% are Hispanic, 5% are White and 2% are Asian or Pacific Islander. Department of Education, Office for Civil Rights, Civil Rights Data Collection, *available at* <http://ocrdata.ed.gov/flex/Reports.aspx?type=school> (last visited June 20, 2013) (National Women's Law Center calculations based on enrollment data for 2009 school year).

- a. Girls of color are more likely to participate in sports through their schools than through private organizations.<sup>3</sup>
- b. While 24% of girls overall fail to graduate on time with a diploma each year, the numbers for girls of color are much worse: 44% of Native American female students, 35% of Black female students, and 34% of Hispanic female students fail to graduate on time.<sup>4</sup>
- c. Obesity is an emerging health epidemic and a particular concern for girls of color. In particular, African-American girls are far more likely to be overweight than white girls.<sup>5</sup>

## **LEGAL ALLEGATIONS**

28. Title IX provides in relevant part that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).

29. The Title IX regulations require each recipient to “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities” under the law and also require the recipient to “notify all its students and employees of the name, office address and telephone number of the employee or employees appointed.” 34 C.F.R. § 106.9(a).

30. The Title IX regulations require the following with respect to athletics programs:

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 . . . 34 C.F.R. § 106.41(a).

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<sup>3</sup> Women's Sports Foundation, *The Wilson Report: Moms, Dads, Daughters and Sports* 5 (June 7, 1988).

<sup>4</sup> Editorial Projects in Education Research Center (EPE), Education Counts Custom Table Builder, *available at* <http://www.edcounts.org/createtable/step1.php>; *see generally* *When Girls Don't Graduate, We All Fail: A Call to Improve High School Graduation Rates for Girls* (National Women's Law Center, Washington, D.C.), 2007, *available at* [http://www.nwlc.org/sites/default/files/pdfs/when\\_girls\\_dont\\_graduate.pdf](http://www.nwlc.org/sites/default/files/pdfs/when_girls_dont_graduate.pdf).

<sup>5</sup> Center for Disease Control's National Center for Health Statistics, *Prevalence of Overweight Among Children and Adolescence: United States, 2003-2004* (2006).

31. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).
32. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).
33. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:
  - (1) Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
  - (2) Where the members of one sex have been and are underrepresented among inter[scholastic] 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 the members of that sex; or
  - (3) Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.
34. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).
35. Title IX also mandates that institutions provide male and female athletes with equal benefits and services. The 1979 Title IX Policy Interpretation states that compliance with this requirement will be assessed by comparing the “availability, quality and kind of benefits, opportunities and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent, that is, equal or equal in effect.” 44 Fed. Reg. at 71,415.
36. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting athletics investigations, states that if even one school in a district is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* 8-10 (1990).
37. As outlined in the Factual Allegations above, the District has not identified its Title IX Coordinator, is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test, and is not providing female athletes with equal benefits and services.

**RELIEF REQUESTED**

38. The NWLC requests that OCR:

- a. Investigate all District high schools to determine whether they are providing (1) equal opportunities for their female students to play sports and (2) equal benefits and services for female athletes. 34 C.F.R. §§ 106.71, 100.7.
- b. Require the District to designate and identify its Title IX Coordinator. 34 C.F.R. § 106.8(a).
- c. Take all steps necessary to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- d. Secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for any violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* 8-10 (1990) (setting forth the approach to athletics investigations for interscholastic athletics).
- e. Monitor any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

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