

**U.S. DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
NEW YORK OFFICE  
32 OLD SLIP, 26TH FLOOR  
NEW YORK, NY 10005-2500**

**ADMINISTRATIVE CLASS COMPLAINT**

**COMPLAINANT**

National Women's Law Center  
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Washington, DC 20036  
(202) 588-5180

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**

New York City Department of Education  
Tweed Courthouse  
52 Chambers Street  
New York, NY 10007

**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 New York City Department of Education (the "District") to the U.S. Department of Education pursuant to the Department's Civil Rights Data Collection (CRDC), as well as information on state-sanctioned sports not being offered to girls at District schools, indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test.
3. In order to address these disparities, the NWLC requests that the New York City Office for Civil Rights ("OCR") investigate the high schools in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

## **JURISDICTION**

4. The New York City 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.
5. The NWLC has not filed this complaint with any other agency or institution.
6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The New York City Department of Education receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX.
8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. 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 opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.
9. Data submitted by District high schools pursuant to the 2006 CRDC—the most recent data available on the Department's website—indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).
10. District high schools do not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The average of the participation gaps (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of the high schools in the District is 7.9 percentage points.
11. If the high schools in the District provided girls with opportunities substantially proportionate to enrollment, an additional 16,993 girls would be able to play sports.
12. Some high schools in the District report zero female athletes, and some report the exact same numbers for students enrolled and athletic participants. The CRDC data for those schools in particular should be examined carefully.
13. More specifically, about one-quarter of the high schools in the District who reported athletes in 2006 have participation gaps of 10 percentage points or more. This number is very likely to be an underestimate given the issues noted in the preceding paragraph. For example, Washington Irving High School reports an 11.2 percentage point gap between

the percentage of girls enrolled (55.4%) and the percentage of athletes who are girls (44.2%). If Washington Irving High School provided girls with 55.4% of the athletic opportunities, an additional 291 girls would be able play sports.

14. The District's data also shows that the female participation gap remains about the same since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).
15. The average of the participation gaps of the high schools in the District was 8.4 percentage points in 2004 and 7.9 percentage points in 2006. But the corresponding numbers of additional girls who could have participated in high school sports if given the opportunity rose from 4,050 in 2004 to 16,993 in 2006.
16. At Washington Irving High School, for example, the participation gap increased from 4.7 percentage points in 2004 to 11.2 percentage points in 2006.
17. Information on state-sanctioned sports not being offered to girls at District high schools indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three).
18. There are several sports sanctioned by the New York State Public High School Athletic Association and the Public Schools Athletic League that are not offered to girls at many District high schools (e.g., cross country, soccer, swimming/diving, tennis, bowling, gymnastics, and field hockey), and there is no reason to believe that high school girls in the District are any less interested in these sports than other girls in the state.
19. By not providing equal opportunities for its female high school students, the New York City Department of Education is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

20. 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).

21. 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).

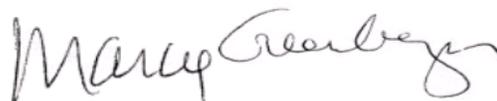
22. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).
23. 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).
24. 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.
25. 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).
26. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school 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* (1990), at 8-10.

27. The New York City Department of Education's own data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test.

**RELIEF REQUESTED**

28. The NWLC requests that:
- a. The New York City OCR investigate all high schools in the New York City Department of Education District to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.
  - b. The New York City OCR take all necessary steps 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).
  - c. If any violations are found, the New York City OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
  - d. The New York City OCR 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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Date: November 10, 2010