October 27, 2021

 **BY EMAIL**

REDACTED

REDACTED

REDACTED

Jared Cordon, Superintendent

Roseburg Public Schools

1419 N.W. Valley View Dr.

Roseburg, OR 97471

Dear REDACTED and Superintendent Cordon:

This letter is the order on the January 14, 2020, appeal filed by REDACTED (Complainant) alleging that Roseburg School District violated ORS 659.850 (prohibiting discrimination in an education program or service financed in whole or in part by moneys appropriated by the Legislative Assembly) and OAR 581-021-0045 (prohibiting discrimination in certain educational agencies, programs, or services under the jurisdiction of the State Board of Education). To ensure compliance with these laws and rules, the Oregon Department of Education will review school district procedures and make findings of fact to determine whether a violation occurred and what action, if any, should be taken.[[1]](#footnote-1)

**APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION**

Complainant alleges that Roseburg School District discriminated against the Roseburg High School Softball Teams by providing those teams with qualitatively inferior practice facilities, competition facilities, and locker rooms than it provided the Roseburg High School Baseball Teams.

The Oregon Department of Education has jurisdiction to resolve this appeal under OAR 581-002-0003. When a person files with the department an appeal of a complaint alleging discrimination, the department will initiate an investigation to determine whether discrimination may have occurred.[[2]](#footnote-2)

If the department determines that discrimination did not occur, the department must issue a final order as described in OAR 581-002-0017.[[3]](#footnote-3) The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.[[4]](#footnote-4)

If the department determines that discrimination may have occurred, the department must issue a preliminary order to the complainant and the school district.[[5]](#footnote-5) The preliminary order must include a reference to the district decision that is on appeal, the procedural history of the appeal, the department’s preliminary findings of fact, and the department’s preliminary conclusions.[[6]](#footnote-6)

If the department issues a preliminary final order, the complainant and school district must attempt to reach an agreement on how to resolve the matter through conciliation.[[7]](#footnote-7) If conciliation fails, the department will issue a final order as described in OAR 581-002-0017.[[8]](#footnote-8) The final order must include a reference to the district decision that is on appeal, the procedural history of the appeal, the department’s findings of fact, the department’s conclusions, and a short explanation of any corrective action required by the school district.[[9]](#footnote-9)

In this appeal, the department has completed its investigation. This letter constitutes the department’s order as to whether a violation of a ORS 659.850 or OAR 581-021-0045 may have occurred.

**PROCEDURAL BACKGROUND**

Champions Car Wash Field, commonly known as Legion Field, is owned by the City of Roseburg. The field is administered by a private organization, the American Legion. Roseburg School District rents Legion Field from the city to provide practice and competition facilities for the Roseburg High School Varsity Baseball Team.

Stewart Park is owned by the City of Roseburg. The district rents several athletic facilities located within the park from the city. Among these facilities are two fields, which the district rents to provide practice and competition facilities for the Roseburg High School Varsity Softball Team and the Roseburg High School Junior Varsity Softball Team.

In 2017, the American Legion began making plans to upgrade Legion Field. American Legion planned to upgrade the field to turf. District administrators were aware of these plans, but they were not involved in any decision-making or fundraising effort.

In July of 2017, a district coach (Coach 1) approached a district administrator (Administrator 3) about the decision to upgrade Legion Field. Coach 1 stated that upgrading the field would create a disparity between the facilities provided for the school’s varsity baseball team and those provided for the school’s varsity softball team. Coach 1 stated that the upgrade was a potential violation of federal Title IX law.[[10]](#footnote-10) Coach 1 and Administrator 3 discussed whether it was possible to upgrade the field utilized by the varsity softball team. Administrator 3 provided Coach 1 with the contact information of the individuals in charge of raising funds for upgrading Legion Field.

On July 9, 2017, a local newspaper published an article entitled “Artificial turf at Legion Field may lead to Title IX implications for Roseburg High School.”[[11]](#footnote-11) The article quoted Roseburg High School’s softball coach saying, “‘It’s really not about money, but about equality. I hope it wouldn’t affect us playing softball because ultimately that’s why I’m here, to coach softball.’”[[12]](#footnote-12) The article also quoted the district’s athletic director saying, “[E]ven though the field is owned by the city, the school could violate the . . . law.”[[13]](#footnote-13) The article quoted the American Legion baseball commissioner saying, “‘We have had conversations with the Roseburg head coach and athletic director. We definitely want to help as much as we can.’”[[14]](#footnote-14)

In July of 2017, Coach 1 received an estimate for how much it would cost to upgrade the field utilized by the varsity softball team. Coach 1 provided the estimate to Administrator 3. Coach 1 told Administrator 3 that he wanted the district’s support before taking a fundraising proposal to the Roseburg City Council. Coach 1 did not receive a response from Administrator 3. A fundraising proposal was never presented to the city council.

In March of 2018, Coach 1 communicated to Administrator 3 about the state of the field. He told Administrator 3 that he was “fed up” with the field conditions and lack of maintenance by the City of Roseburg. In response to finding condoms, needles, and human feces in the dugouts, Coach 1 asked Administrator 3 to request that the city lock up the dugouts and provide the school with the keys. Administrator 3 contacted the city and relayed Coach 1’s concerns, stating that the situation was “becoming unsafe” for the players. The council refused to lock up the dugouts, stating that they could not lock up a “public use space.” However, following Administrator 3’s request, the city increased its maintenance of the facilities.

During 2019, Coach 1 repeatedly attempted to raise interest in upgrading the field. He discussed the potential of upgrading the field with Administrator 3 and a member of the city council. However, those conversations never resulted in an attempt to upgrade the facilities.

Coach 1 resigned in 2019.

On August 22, 2019, Complainant emailed Administrator 3 about the conditions of the field utilized by the varsity softball team. Administrator 3 replied that they would put together an estimate for how much it would cost to fence and turf the field. Administrator 3 met with the administrators of Legion Field and representatives from other schools and the City of Roseburg. During these discussions, Administrator 3 learned that the city was not interested in making improvements to the field. During an interview with the Oregon Department of Education, Administrator 3 stated that absent city support, the district was incapable of upgrading the field. Administrator 3 felt incapacitated by the proposition of spending district funds on non-district property. In a separate interview with the department, another district administrator (Administrator 1) stated that the district’s relationship with the city had become strained because the city mistakenly believed that the district was going to pay for part of the upgrade to Legion Field.

On January 14, 2020, Complainant filed this appeal with the department. The department accepted the appeal on the basis that 90 days had passed since the date on which Complainant initially emailed Administrator 3 about the conditions of the field.[[15]](#footnote-15)

**PRELIMINARY FINDINGS OF FACT**

After conducting its investigation, the Oregon Department of Education makes the following findings of fact:

1. Roseburg School District provides several athletic opportunities for students. Most of those athletic opportunities are considered “athletic activities” within the meaning of federal Title IX law.[[16]](#footnote-16) These opportunities are: football for male student athletes, volleyball for female student athletes, cross country for both male and female student athletes, soccer for both male and female student athletes, wrestling for both male and female student athletes, basketball for both male and female student athletes, swimming for both male and female student athletes, golf for both male and female student athletes, track and field for both male and female student athletes, tennis for both male and female student athletes, baseball for male student athletes, and softball for female student athletes.
2. At the time that the department conducted is investigation, 50% of the district’s student body was male and 50% of was female.
3. Under federal Title IX law, equity in athletic opportunities is determined by analyzing the opportunities and support available to male and female students.[[17]](#footnote-17) In consideration of the meaning of “athletic activities” under Title IX, 60% of student athletes attending school at the district are male and 40% of student athletes attending school at the district are female.
4. During the 2019-2020 school year, the district conducted a student survey to assess student interest in participating in district athletic activities and barriers facing students who want to participate in athletic activities. During the department,’s investigating it obtained a copy of the survey and reviewed it. According to the survey, there was not enough interest in additional athletic activities by female students for the district to sustain any additional athletic opportunities.[[18]](#footnote-18) In response to the survey, the district changed its fee structure for athletic activities and components of certain athletic programs to better accommodate female student athletes.
5. Roseburg High School has several athletic facilities located off school property. The district rents these facilities from the City of Roseburg or private clubs. These athletic facilities are: Champions Car Wash Field, two baseball fields at Sunshine Park, two softball fields at Stewart Park, other athletic facilities at Stewart Park, Fir Grove Fields, and Roseburg Country Club.
6. Male and female student athletes have equal access to Fir Grove Fields, Roseburg Country Club, and the other athletic facilities at Stewart Park.
7. Champions Car Wash Field, commonly known as Legion Field, is owned by the City of Roseburg. The field is administered by a private organization, the American Legion. Roseburg School District rents Legion Field from the city to provide practice and competition facilities for the Roseburg High School Varsity Baseball Team. Legion Field is located 1.5 miles from Roseburg High School.
8. During the department’s investigation, the department made the following observations about Legion Field:
	1. Roseburg High School shares the field with three other baseball teams, two from private schools and one from a community college. Roseburg High School has the right to schedule games before the other schools.
	2. The field is a regulation baseball field made of turf.
	3. The field is fenced in the entirety. The outfield is surrounded by a high wall. The field has two entrances, both with gated access. The gates have locks and are locked when the field is not in use. Both gates are adjacent to booths that can be used to sell tickets and a booth that is used to sell concessions.
	4. The field has lighting for use at night games.
	5. The field’s dugouts are covered and have cement floors. The dugouts are locked when not in use. Only Roseburg High School and other entities renting the field have access to the dugouts.
	6. The field has stadium seating with a mix of bleachers and backed chairs. A section of the backed chairs is covered. The stadium can seat several hundred spectators. A ticket booth and concession stand are located near the stadium.
	7. The field has restrooms that are located inside the fenced area.
	8. The field has no locker rooms. Student athletes use the restrooms to prepare for practice and games.
9. Adjacent to Legion Field are batting cages that the Roseburg High School Varsity Baseball Team may access during the baseball pre-season and season and that the Roseburg High School Varsity Softball Team may access during the softball pre-season.
10. During the department’s investigation, the department made the following observations about the batting cages that are adjacent to Legion Field:
	1. The batting cages are located inside a covered, closed facility with a turf and cement floor.
	2. The batting cages are wired for electricity.
	3. The batting cages are equipped with pitching machines and lights.
	4. The batting cages are locked when not in use.
	5. The varsity baseball team shares the batting cages with the two private schools with which the team shares Legion Field.
	6. The varsity baseball team does not share the batting cages with the varsity softball team during the baseball season.
11. Sunshine Park has two baseball fields. The fields (for purposes of this order, the department will refer to these fields as “Sunshine Fields”) are owned and administered by the City of Roseburg. Roseburg School District rents the fields from the city to provide practice and competition facilities for the Roseburg High School Junior Varsity Baseball Team and the Roseburg High School Freshman Baseball Team. Sunshine Park is located 4.7 miles from Roseburg High School.
12. During the department’s investigation, the department made the following observations about Sunshine Fields:
	1. Roseburg High School has the exclusive right to use the fields during baseball season. Roseburg High School must share the fields with community based teams when it is not baseball season.
	2. The fields are regulation baseball fields made of grass and dirt.
	3. The fields are fenced in the entirety, but not locked. The public may access the fields at any time. Even if the gates had locks, an individual may enter the fields through the dugout.
	4. The fields do not have lighting.
	5. The fields to not have an electronic scoreboard.
	6. The fields’ dugouts are covered and have concrete floors. The dugouts are open to the public when not in use. The dugouts’ sides are covered by chain link fencing.
	7. Both fields have two sets of metal bleachers for spectators. The fields do not have officially designated concession areas.
	8. There are no bathrooms designated for exclusive use by student athletes, coaches, or spectators at the fields. Student athletes must use the public restrooms that are a part of the Sunshine Park complex.
	9. The fields have no locker rooms. Student athletes use the park’s restrooms to prepare for practice and games.
13. Stewart Park has two softball fields. The fields are owned and administered by the City of Roseburg. Roseburg School District rents the fields from the city to provide practice and competition facilities for the Roseburg High School Varsity Softball Team and the Roseburg High School Junior Varsity Softball Team (for purposes of this order, the department will refer to the field used by the varsity softball team as Stewart Field A and the field used by the junior varsity soft ball team as Stewart Field B). Stewart Park is located 1.5 miles from Roseburg High School.
14. During the department’s investigation, the department made the following observations about Stewart Field A:
	1. Roseburg High School must share the field with community based teams. Roseburg High School has the right to schedule games before the other teams.

* 1. The field is a regulation softball field made of grass and dirt.
	2. The field is partially fenced, enclosing no more than half of the field. The fence is not capable of being locked. The public may access the field at any time.
	3. The field has lighting for use at night games.
	4. The field has an electronic scoreboard attached to light pole toward the back of the field.
	5. The fields’ dugouts are covered and have concrete floors. The dugouts are open to the public when not in use. The dugouts’ sides are partially covered by brick and partially covered by chain link fencing. The field’s dugouts are also smaller than the dugouts located at Legion Field. At the time of the department’s investigation, the department observed that the dugouts were worn down, but mostly clean. Dirt covered the floor and the dugouts would have to be swept before they could be used.
	6. The field has two sets of metal bleachers for spectators. The field does not have an officially designated ticket booth or concession area.
	7. There are no bathrooms designated for exclusive use by student athletes, coaches, or spectators at the field. Student athletes must use the public restrooms that are a part of the Stewart Park complex.
	8. The field has no locker rooms. Student athletes use the park’s restrooms to prepare for practice and games.
1. Adjacent to Stewart Field A are batting cages that the Roseburg High School Varsity Softball Team may access during the softball pre-season and season.
2. During the department’s investigation, the department made the following observations about the batting cages that are adjacent to Stewart Field A:
	1. The batting cages are located outside. They have a turf floor and their sides and roof are covered by metal and chain link fencing.
	2. The batting cages are wired for electricity.
	3. The batting cages are equipped with a pitching machine.
	4. The batting cages are locked when not in use.
	5. The varsity softball team has the exclusive right to use the batting cages during softball season.
3. During the department’s investigation, the department made the following observations about Stewart Field B:
	1. Roseburg High School must share the field with community-based teams. Roseburg High School has the right to schedule games before the other teams.
	2. The field is partially fenced, enclosing no more than a third of the field. The fence is not capable of being locked. The public may access the field at any time.
	3. The field has lighting for use at night games.
	4. The field does not have an electronic scoreboard.
	5. The fields’ dugouts are covered and have concrete floors. The dugouts are open to the public when not in use. The dugouts’ sides are partially covered by brick and partially covered by chain link fencing.
	6. The field has two sets of metal bleachers for spectators. The field does not have an officially designated concession area.
	7. There are no bathrooms designated for exclusive use by student athletes, coaches, or spectators at the field. They may use the public restrooms that are a part of the Stewart Park complex.
	8. The field has no locker rooms. Student athletes use the park’s restrooms to prepare for practice and games.
4. During the department’s investigation, the department collected the following evidence related to the condition of Stewart Field A, Stewart Field B, and the batting cages used by the Roseburg High School Varsity Softball Team:
	1. As part of Complainant’s complaint filed with the department on appeal, Complainant provided the department with photos depicting the presence of trash and hazardous waste at the fields.
	2. During the department’s investigation, the department conducted interviews with Coach 1, another coach at the district (Coach 2), two students attending school in the district (Student 1 and Student 2), two parents of children attending school in the district (Parent 1 and Parent 2), and a resident of the City of Roseburg (Witness).
		1. These interviewees confirmed the accuracy of the photos submitted by Complainant.
		2. The interviewees stated that Roseburg High School’s softball coaches had to arrive before practice and games to clear the field. Trash and hazardous waste that had to be removed included dog feces, human feces, needles, and condoms.
		3. Photos taken as recently as July 22, 2020, confirmed the statements made by interviewees.
		4. The interviewees stated that cleaning the field took anywhere from a half hour to several hours, depending on the state of the field and the weather.
		5. Coach 1 stated that field maintenance was a routine part of his and other coaches’ jobs at Roseburg High School. However, Coach 1 also stated that the amount of time and effort required to clean Stewart Field A and Stewart Field B exceeded the amount of time and effort that he had spent in previous district coaching positions performing similar duties.
		6. Coach 2 stated that preparing the fields took approximately one hour before practice and three hours before a game.
		7. Student 1 and Parent 1 stated that on one occasion, preparing the a field took approximately eight hours.
		8. Witness stated that Roseburg High School’s softball coaches were primarily responsible for cleaning the fields, not the City of Roseburg.
		9. Although the public may access Sunshine Fields at all times, that field did not present the same problems as Stewart Field A and Stewart Field B. The former field is located outside the city center and is not used by the public to the degree that Stewart Field A and Stewart Field B are. In contrast, Stewart Field A and Stewart Field B are located near the city center and are routinely used by the public.
	3. During departmental interviews, Coach 1, another district coach, Student 1, Student 2, Parent 1, and Parent 2 described incidents where homeless individuals were found sleeping in the fields’ dugouts.
		1. The interviewees stated that Roseburg High School’s softball coaches had to arrive before practice and games to wake up these individuals and ask them to leave.
		2. Interviewees described the dugouts as frequently smelling of urine.
		3. Interviewees described the dugouts as being polluted by human feces, needles, and condoms.
		4. Coach 1 described several incidents where homeless individuals were aggressive toward coaches and players. During departmental interviews, Witness confirmed Coach 1’s statements.
	4. During departmental interviews, Student 1, Student 2, Parent 1, and Parent 2 described incidents when the fields became waterlogged, which prevented the softball teams from using them. The interviewees stated that when not in use, Stewart Field A is covered by tarps. The interviewees also stated that the tarps are old, have holes, and do not adequately prevent the fields from becoming waterlogged. Parent 2 stated that when the field dries out, it becomes cracked, and that when cracked, the field is hazardous to play on.
	5. During departmental interviews, Coach 2, Student 1, and Witness described the use of the Stewart Park complex’s restrooms by student athletes.
		1. Witness stated that the Roseburg High School’s softball coaches do not feel comfortable allowing student athletes to use the restrooms alone and require students to take a “buddy” when using the restrooms. Witness also stated that the softball coaches had to supply the restrooms with toilet paper and other items. Witness stated that the restrooms were often flooded and unusable.
		2. Student 1 stated that the restrooms were the only available place for student athletes to change their clothes. Student 1 stated that because of the condition of the restrooms, student athletes would stop at a local church on their way to practice to change their clothes. Student 1 stated that the restrooms were unclean and unsafe for student athletes.
		3. Coach 2 stated that student athletes previously had changed their clothes in their cars parked near the field. Coach 2 stated that a man was taking pictures of the student athletes as they changed their clothes in their cars. Coach 2 sated that the Roseburg High School’s softball coaches no longer allow student athletes to change their clothes in their cars and instead direct them to use the restrooms.
	6. During departmental interviews, Parent 1 and Witness stated that during the Spring and Summer of 2020, the batting cages used by the Roseburg High School Varsity Softball Team lost access to electricity. As a result, student athletes could not use the pitching machine.
5. Roseburg High School has several athletic facilities on school property. These athletic facilities are: two gyms (one is larger than the other), locker rooms for both male and female student athletes (both attached to the larger gym), two rooms where teams can meet (both attached to the smaller gym), a weight room, a multi-use athletic field used as both a practice and competition facility, and an open field used as a practice facility.
6. Male and female student athletes have equal access to the two gyms, the two rooms where teams can meet, the weight room, the multi-use athletic field, and the open field.
7. The locker room for male student athletes contains a large “main room,” shower facilities, several bathroom stalls, and two rooms where teams can meet. One of the rooms is primarily used for wrestling and junior varsity football, the other is primarily used for varsity football. The room used for wrestling and junior varsity football contains lockers for student athletes who play football that are large enough to accommodate football equipment, several sinks and mirrors, and a small TV. The room used for varsity football contains lockers for student athletes who play football that are large enough to accommodate football equipment and sinks and mirrors. At the time of the department’s investigation, 290 male student athletes used the locker room.
8. The locker room for female student athletes contains a large “main room,” shower facilities, several bathroom stalls, and one room where teams can meet. Multiple girls’ athletic teams use the room. The room contains large lockers. The room is much smaller in size than either of the two rooms in the locker room for male student athletes where teams meet. At the time of the department’s investigation, 161 female student athletes used the locker room.
9. During the department’s investigation, the department collected the following evidence related to the use of the locker rooms for male student athletes and female student athletes:
	1. The locker room for male student athletes is larger than the locker room for female student athletes.
	2. The locker room for male student athletes contains two banks of lockers. The locker room for female student athletes only contains one bank of lockers.

* 1. The locker room for male student athletes has lockers designated for a single sport, football.
	2. The locker room for male student athletes has two team rooms whereas the locker room for female student athletes has one team room. Each team room used by male student athletes is roughly twice as large as the team room used by female student athletes.
	3. When male student athlete teams from other school districts visit, Roseburg High School allows those teams to use the locker room for female student athletes. When female student athlete teams from other districts visit, the teams share the locker room for female student athletes with Roseburg High School students and use a classroom across the hall to store equipment and clothes.
1. During the department’s investigation, the department collected the following data pertaining to all male and female student athletes’ accessibility to certain athletic facilities.
	1. With respect to the location of athletic facilities:
		1. 65% of male student athletes and 61% of female student athletes have access to on-campus athletic facilities for competitions. This disparity is partly due to the fact that a higher percentage of female student athletes play softball than male student athletes play baseball.
		2. 58% of male student athletes and 49% of female student athletes have access to on-campus athletic facilities for practice. This disparity is partly due to the fact that a higher percentage of female student athletes play softball than male student athletes play baseball.
		3. 25% of male student athletes and 37% of female student athletes have access to athletic facilities located within 1.5 miles of Roseburg High School for competitions.
		4. 32% of male student athletes and 49% of female student athletes have access to athletic facilities located within 1.5 miles of Roseburg High School for practice.
		5. 10% of male student athletes and two percent of female student athletes have access to athletic facilities located within four to six miles of Roseburg High School for competition.
		6. 10% of male student athletes and two percent of female students athletes have access to athletic facilities located within four to six miles of Roseburg High School for practice.
	2. With respect to the use of grass and turf fields:
		1. 167 male student athletes and 62 female student athletes play team sports requiring a grass or turf field.
		2. 81% of male student athletes and 53% of female student athletes have access to a turf field for competitions.
		3. 62% of male student athletes and two percent of female student athletes have access to a turf field for practice.
	3. With respect to facilities with a scoreboard, 77% of male student athletes and 76% of female student athletes have access to a scoreboard.
	4. With respect to facilities capable of being closed, locked, or consistently monitored:
		1. 83% of male student athletes and 79% of female student athletes have access to such facilities for competition.
		2. 75% of male student athletes and 67% of female student athletes have access to such facilities for practice.
	5. With respect to selling tickets and concessions:
		1. Most student athlete teams do not sell tickets or concessions.
		2. Of the student athlete teams that do sell tickets or concessions, all teams have access to fields that are equipped to monitor spectators for ticketed entry and sell concessions, like Legion Field.
	6. With respect to spectator seating:
		1. Most student athlete teams with spectator seating share facilities and thus have the same quantity and quality of seating for both male student athletes and female student athletes.
		2. Of the student athlete teams that do not share facilities, only the varsity baseball team has access to backed, covered seating. The only other student athlete teams that do not share facilities are the junior varsity and freshman baseball teams and the varsity and junior varsity softball teams.

**ANALYSIS**

Under Oregon’s anti-discrimination statute,

A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.[[19]](#footnote-19)

For purposes of this prohibition, “discrimination” is defined to mean “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”[[20]](#footnote-20)

In applying this prohibition to school districts, OAR 581-021-0045(3) specifically states that a school district may not:

 (a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;

 (b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;

 (c) Deny any person such aid, benefit, or service;

 (d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

 (e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees; [or]

 (f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

The question on appeal is whether Roseburg School District provided inequitable athletic facilities for male student athletes and female student athletes in violation of OAR 581-021-0045(3)(b) (prohibiting providing different aids, benefits, or services), OAR 581-021-0045(3)(c) (prohibiting denying an aid, benefit or service), or OAR 581-021-0045(3)(f) (prohibiting limiting the enjoyment of a right, privilege, advantage, or opportunity).

A. Legal Standard under ORS 659.850 OAR 581-021-0045 for Discrimination Appeals Alleging Inequitable Athletic Facilites

In analyzing Roseburg School District’s duties with respect to complaints alleging discrimination on the basis of sex, the Oregon Department of Education relies on the federal anti-discrimination laws known as Title IX[[21]](#footnote-21) and the interpretation of those laws by federal courts and the United States Department of Education’s Office for Civil Rights (Office for Civil Rights). Because Title IX has the same intent as ORS 659.850 and OAR 581-021-0045, and because the text of ORS 659.850 and OAR 581-021-0045 allow the statute and rule to be applied broadly, the interpretation of Title IX by federal courts and the Office for Civil Rights is an important tool for the Oregon Department of Education to use in adjudging the application of ORS 659.850 and OAR 581-021-0045.

Federal regulations implementing Title IX provide that

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 [an educational institution[[22]](#footnote-22) that receives federal funds, and no such educational institution] shall provide any such athletics separately on such basis.[[23]](#footnote-23)

Federal regulations further provide that

[An educational institution that receives federal funds] which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both[[24]](#footnote-24) sexes. In determining whether equal opportunities are available, the [United States Department of Education] 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. [The] scheduling of games and practice times;

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1. [The] provision of locker rooms, practice and competitive facilities; [and]
2. The provision of . . . training facilities and services[.][[25]](#footnote-25)

Importantly, federal courts have demonstrated great deference to the Office for Civil Rights in interpreting and applying Title IX law.[[26]](#footnote-26)

Finally, both the Office for Civil Rights and federal courts have clarified that although certain aspects of Title IX and its implementing regulations only refer to intercollegiate athletics, the Office for Civil Rights has the authority to apply Title IX standards to high school athletics.[[27]](#footnote-27)

B. Whether Roseburg School District Provides Both Male and Female Student Athletes with a Selection of Sports and Levels of Competition that Effectively Accommodate Their Interests and Abilities

With respect to whether an educational institution provides both male student athletes and female student athletes with a selection of sports and levels of competition that effectively accommodate their interests and abilities, the Office for Civil Rights employs a three-part test.[[28]](#footnote-28) Under that test, the office evaluates whether (1) the percent of male and female students participating in student athletics at an educational institution is substantially proportionate to the percent of male and female students enrolled at the educational institution; (2) the educational institution has a history and continuing practice of expanding participation opportunities for the underrepresented sex; or (3) the educational institutional is fully and effectively accommodating the interests and abilities of the underrepresented sex.[[29]](#footnote-29)

In this case, there is a clear disparity between the percent of male student athletes and female student athletes participating in student athletics in Roseburg School District and the overall number of male students and female students enrolled in school at the district. At the time that the department conducted its investigation, 50% of the student body was male and 50% of the student body was female. The district provides several athletic opportunities for students including football for male student athletes, volleyball for female student athletes, cross country for both male and female student athletes, soccer for both male and female student athletes, wrestling for both male and female student athletes, basketball for both male and female student athletes, swimming for both male and female student athletes, golf for both male and female student athletes, track and field for both male and female student athletes, tennis for both male and female student athletes, baseball for male student athletes, and softball for female student athletes. Of the student athletes participating on athletic teams, 60% are male and 40% are female.

However, the evidence indicates that the district is fully and effectively accommodating the interests and abilities of female student athletes. During the 2019-2020 school year, the district conducted a student survey to assess student interest in participating in district athletic activities and barriers facing students who want to participate in athletic activities. According to the survey, there was little interest by female students in establishing additional athletic activities in which they could participate. Further, in response to the survey, the district changed its fee structure for athletic activities and components of certain athletic programs to better accommodate female student athletes.

In consideration of the evidence, the Oregon Department of Education finds that the district met this Title IX criterion. The district provided both male and female student athletes with a selection of sports and level of competition that effectively accommodate their interests and abilities.

C. Whether Roseburg School District Provides Equal Opportunity to Male and Female Student Athletes with Respect to the Provision of Equipment, Supplies, Locker Rooms, Training Facilities, Competitive Facilities, and Other Facilities, and with Respect to the Scheduling of Games and Practice Times

With respect to whether an educational institution provides male student athletes and female student athletes with equal provision of equipment, supplies, locker rooms, training facilities, competitive facilities, and other facilities, and with equal scheduling of games and practice times, both federal courts and the Office for Civil Rights have provided useful guidance.

In *Ollier v. Sweetwater Union High School District*, the Southern District California Federal District Court opined that

[c]ompliance in the area of equal treatment and benefits is assessed based on overall comparison of the male and female athletic programs, including an analysis of recruitment benefits, provision of equipment and supplies, scheduling of games and practices, availability of training facilities, opportunity to receive coaching, provision of locker rooms and other facilities and services, and publicity.

[A] disparity in one program component (i.e., scheduling of games and practice time) can alone constitute a Title IX violation if it is substantial enough in and of itself to deny equality of athletic opportunity to students of one sex at a school. A disparity in one program component, however, can be offset by a comparable advantage to that sex in another area, as long as the overall effect of any difference is negligible.[[30]](#footnote-30)

According to the court, determining compliance with Title IX is assessed by making an “overall comparison” of an educational institution’s programs’ components. In this case, the department is limiting its analysis to “equipment and supplies, scheduling of games and practices, availability of training facilities, opportunity to receive coaching, [and] provision of locker rooms and other facilities and services” because either there is no evidence of any disparity in the provision of other programs’ commponents to all sexes attending school in Roseburg School District *or* the components are not offered as a part of Roseburg High School’s athletic program.[[31]](#footnote-31)

Also according to the court, “[a] disparity in one program component . . . can be offset by a comparable advantage . . . in another area.”[[32]](#footnote-32)

In contrast to the Southern District of California Federal District Court, the Office for Civil Rights often determines compliance with Title IX by more narrowly assessing each program component. In a case involving locker rooms, training and competitive facilities, medical and training facilities and services, and housing and dining facilities and services, the Office for Civil Rights explained its analysis as follows:

The Title IX implementing regulation . . . requires a recipient to provide equal athletic opportunity for members of both sexes . . . in the provisions of . . . locker rooms, practice and competitive facilities, in the provision of medical and training facilities and services, and in the provision of housing and dining facilities and services.

\* \* \*

In analyzing *each* element, [the Office for Civil Rights] examines whether the same or similar benefits or services are provided for all students or, if not, whether the differences negatively affect students of one sex, resulting in a “disparity.”[[33]](#footnote-33)

However, as with the federal district court, the Office for Civil Rights examines whether a disparity is offset by a benefit:

When disparities are identified between the boys’ and the girls’ teams, e.g., if a boys’ team received a superior benefit in some way, [the Office for Civil RIghts] considers whether the benefit provided to the boys’ program was offset by an unmatched benefit to any of the teams in the girls’ program. In making this “program-wide” comparison, and before [the office] concludes that a benefit to one of the teams in the girls’ program offsets a benefit provided to one of the teams in the boys’ program, [the office considers whether the offsetting benefits were equivalent or equal in effect.[[34]](#footnote-34)

For purposes of this order, the Oregon Department of Education is making an “overall comparison” of several of the district’s programs’ components, paying particular attention to the programs and program components that are allegedly inequitable.

1. *Analysis of Legion Field and Stewart Field A*

Roseburg High School’s varsity baseball team practices and plays at Legion Field. Legion Filed is owned by the City of Roseburg and administered by a private organization. Roseburg High School’s Varsity Softball Team practices and plays at Stewart Filed A. Stewart Field A is owned and administered by the City of Roseburg.

In comparing the two facilities, the Oregon Department of Education notes the following:

* Both fields are located approximately 1.5 miles from Roseburg High School.
* Roseburg High School’s varsity baseball team shares Legion Field with three other baseball teams. The baseball team has the right to schedule games before the other teams. Similarly, Roseburg High School’s varsity softball team shares Stewart Field A with other community-based teams. The softball team also has the right to schedule games before the other teams.
* Legion Field is made of turf. In contrast, Stewart Field A is made of grass and dirt.
* Legion Field is fenced in the entirety. The outfield is surrounded by a high wall. The field has two entrances, both with gated access. The gates have locks and are locked when the field is not in use. Both gates are adjacent to booths that can be used to sell tickets and a booth that can be used to sell concessions. In contrast, Stewart Field A is only partially fenced, enclosing no more than half of the field. The fence is not capable of being locked. The public may access the field at any time.
* Both Legion Field and Stewart Field A have lighting for use at night games.
* Legion Field’s dugouts are covered and have cement floors. The dugouts are locked when not in use. Only Roseburg High School and other entities renting the field have access to the dugouts. Stewart Field A’s dugouts are also covered with concrete floors. However, the dugouts are open to the public when not in use. There is a disparity in the quality of the dugouts as well. Whereas Legion Field’s dugouts are have concrete walls and a concrete roof, Steward Field A’s dugouts are covered by chain link fence and brick, making them less shielded from spectators. Stewart Filed A’s dugouts are also smaller. During the department’s investigation, the department observed that the dugouts were worn down, but mostly clean. Dirt covered the concrete floor and would have to be swept before the dugouts could be used.
* Legion Field has stadium seating with a mix of bleachers and backed chairs. A section of the backed chairs is covered. The stadium can seat several hundred spectators. A ticket booth and concession stand are located near the stadium. In contrast, Stewart Field A has only two sets of metal bleachers and does not have any designated ticket booth or concession area.
* Legion Field has restrooms that are located inside the fenced area. In contrast, Stewart Field A has no bathrooms designated for exclusive use by student athletes, coaches, and spectators. They may use the public restrooms that are part of the Stewart Park complex.
* Legion Field has no locker rooms. Student athletes use the restrooms – which are not accessible by the public — to prepare for practice and games. Similarly, Stewart Field A has no locker rooms. However, Stewart Field A also does not have any bathroom designated for exclusive use by student athletes, coaches, and spectators.

Although a few aspects of Legion Field and Stewart Field A are comparable – such as their location from school, the scheduling of games, and the lighting of the fields at night – the majority of components at Legion Field are superior to the components at Stewart Field A. These components include (1) the disparity between turf and grass and dirt, (2) the disparity in fencing and public access to the fields (3) the disparity in being able to lock the dugouts and public access to the dugouts, (4) the disparity in the quality of the dugouts, (5) the disparity – both quantitatively and qualitatively – in seating, (6) the disparity in ticket booth and concession stand availability, (7) the disparity in the types of restrooms that are available, and (8) the disparity in use of types of restrooms used to prepare for practice and games.

Additionally, there is no evidence that Stewart Field A has an offset that benefits the softball varsity team.

Finally, it is important to clarify the degree to which these disparities affected the softball varsity team. Stewart Field A was often covered by trash and hazardous waste, including dog feces, human feces, needles, and condoms, a direct result of the field being open to the public. The Roseburg High School’s softball coaches often had to arrive early before practice or competitive events to clean the field. Cleaning the field generally took one or more hours. On one occasion it took approximately eight hours.

Homeless individuals were found sleeping in Stewart Field A’s dugouts on more than one occasion, another direct result of the facilities being open to the public. Coaches would have to ask these individuals to leave the premises. The dugouts smelled of urine and were polluted by human feces, needles, and condoms. At times, homeless individuals were aggressive toward coaches and players.

Because Stewart Field A was grass and dirt, as opposed to turf, the field would become waterlogged after a rainstorm. Tarps were used to protect the field, but the tarps were old and had holes. When the field would dry out, it would become cracked and hard, making it dangerous to play on.

With respect to Stewart Park’s bathrooms, many coaches did not feel comfortable allowing softball team members to use the bathrooms unless they were accompanied by another student. This led to the creation of a “buddy” system. Coaches also had to supply the bathrooms with toilet paper and other items. The bathrooms were often flooded and unusable.

Many members of the softball team did not feel comfortable using the bathrooms as a locker room. As a result, they would change in their cars or at a local church located between the school and field. Eventually, Roseburg High School’s softball coaches prohibited using cars to change clothes because they observed a man taking pictures of female student athletes who were changing.

1. *Analysis of Batting Cages*

Both Roseburg High School Baseball Varsity Team and Roseburg High School Softball Varsity Team have access to batting cages that are adjacent to Legion Field and Stewart Field A, respectively. In comparing the two facilities, the Oregon Department of Education notes the following:

* Both the varsity baseball team and the varsity softball team have access to the batting cages adjacent to Legion Field during the baseball pre-season. Only the varsity baseball team has access to the batting cages adjacent to Legion Field during the baseball season.
* The batting cages adjacent to Legion Field are located inside a covered, closed facility with a turf and cement floor. In contrast, the batting cages adjacent to Stewart Field A are located outside. They have a turf floor and their sides and roof are covered by metal and chain link fencing.
* Both batting cages are wired for electricity.
* Both batting cages are equipped with a pitching machine. The batting cages adjacent to Stewart Field A are equipped with outdoor lighting.
* Both batting cages are locked when not in use.
* The varsity baseball team shares the batting cages adjacent to Legion Field with two of the schools with which the baseball team shares Legion Field. In contrast, during the softball season, the varsity softball team has the exclusive right to use the batting cages adjacent to Stewart Field A.

There are several comparable elements between the batting cages adjacent to Legion Field and the batting cages adjacent to Stewart Field A. Both are locked when not in use, both are wired for electricity, and both are equipped with pitching machines. However, there is a major discrepancy between the two facilities. Whereas the batting cages adjacent to Legion Field are located inside a covered, closed facility with a turf and cement floor, the batting cages adjacent to Stewart Field A are located outside and they have a turf floor and metal and chain link sides.

The disparity between the two facilities is partially alleviated by the fact that the varsity softball team may use the batting cages adjacent to Legion Field during the baseball pre-season. However, the varsity softball team only may use the inferior batting cages adjacent to Stewart Field A during the baseball season.

The varsity softball team also has a benefit that the varsity baseball team does not. Whereas the varsity baseball team must share the batting cages adjacent to Legion Field with two private schools, the varsity softball team has the exclusive right to use the batting cages adjacent to Stewart Field A during the softball season. However, in the department’s view, that offsetting benefit is not “equivalent or equal in effect” to the disparity created by one facility being located indoors and the other facility being located outdoors.[[35]](#footnote-35) For example, the batting cages adjacent to Stewart Field A were compromised because they were located outside. During the Spring and Summer of 2020, the batting cages lost electricity. As a result, the varsity softball team lost its use of the pitching machine for several months.

1. *Analysis of Sunshine Fields and Stewart Field B*

Two other facilities located off school property are Sunshine Fields, owned and administered by the City of Roseburg, where the Roseburg High School Junior Varsity Baseball Team and the Roseburg High School Freshman Varsity Baseball play and practice, and Stewart Field B, also owned and administered by the City of Roseburg, where Roseburg High School Junior Varsity Baseball Team plays and practices.

In comparing the two facilities, the Oregon Department of Education notes the following:

* Sunshine Fields are located approximately 4.7 miles from Roseburg High School whereas Stewart Field B is located approximately 1.5 miles from Roseburg High School.
* Roseburg High School’s junior varsity and freshman baseball teams have the exclusive right to use Sunshine Fields during the baseball season. In contrast, Roseburg High School’s junior varsity softball team shares Stewart Field B with other community-based teams. The softball team does have the right to schedule games before the other community-based teams.
* Both fields are made of grass and dirt.
* Sunshine Fields are fenced in the entirety, but not locked. The public may access the fields at any time. Even if the gates had locks, an individual would be able to enter the fields through the dugouts. In contrast, Stewart Field B is only partially fenced, enclosing no more than half of the field. The fence is not capable of being locked. As with Sunshine Fields, the public may access the field at any time.
* Sunshine Fields do not have lighting. Stewart Field B has lighting for use at night games.
* Sunshine Fields’ dugouts are covered on the sides and have concrete floors and a concrete roof. The dugouts are open to the public when not in use. Stewart Field B’s dugouts also also are covered on the sides and have concrete floors and a concrete roof. Similar to Sunshine Fields, the dugouts are open to the public when not in use.
* Sunshine Fields have two sets of metal bleachers for spectators. The fields do not have any designated ticket booth or concession area. Similarly, Stewart Field B has two sets of metal bleachers for spectators and no designated area for a ticket booth or concession area.
* Both Sunshine Fields and Stewart Field B do not have bathrooms designated for exclusive use by student athletes, coaches, and spectators. At Sunshine Fields, they may use public restrooms that are a part of the Sunshine Park complex. At Stewart Field B, they may utilize public restrooms that are a part of the Stewart Park complex.
* Both Sunshine Fields and Stewart Field B do not have locker rooms. Student athletes at the fields use the respective parks’ restrooms to prepare for practice and games.

Many aspects of Sunshine Fields and Stewart Field B are comparable, such as their use of grass and dirt, their ability to be accessed by the public, their dugouts and metal bleachers, their lack of a designated area for a ticket booth or concession area, their lack of locker rooms, and the use of restrooms as locker rooms. However, there are a few disparities between the fields. The junior varsity and freshman baseball teams have the exclusive right to use Sunshine Fields during the baseball season whereas the junior varsity softball team shares Stewart Field B with other community-based teams. Although accessible by the public, Sunshine Fields are fenced in the entirety whereas Stewart Field B is not.

There are also offsetting benefits to consider. Stewart Field B is located closer to Roseburg High School than Sunshine Fields. Whereas Stewart Field B has lighting, Sunshine Fields do not. When not considering the impact that the disparities have on Stewart Field B, these offsetting benefits make the initial impression of being equivalent and equal. However, the impact of Stewart Field B being open to the public creates a qualitative disparity that the department cannot ignore.

As with Stewart Field A, Stewart Field B was often covered by trash and hazardous waste, such as dog feces, human feces, needles, and condoms. As with Stewart Field A, the Roseburg High School’s softball coaches were largely responsible for cleaning the field. As with Stewart Field A, homeless individuals were found sleeping in Stewart Field B’s dugouts, which smelled of urine and were polluted by human feces, needles, and condoms. As with Stewart Field A, softball team members could not use Stewart Park’s bathrooms unless they were accompanied by another student. The bathrooms were often flooded and unusable. Many members of the softball team did not feel comfortable using the bathrooms as a locker room, resulting in them changing in their cars or at a local church located between the school and field. There is no evidence that Sunshine Fields was subject to the same or similar conditions.

The discrepancy between the effects of Sunshine Fields being accessible by the public and Stewart Field B being accessible by the public are largely explained by the fields’ locations. Sunshine Fields are located 4.7 miles from Roseburg High School, outside of Roseburg’s city center. In contrast, Stewart Field B is located 1.5 miles from Roseburg High School, in Roseburg’s city center.

1. *Analysis of Male Student Athlete Locker Rooms and Female Student Athlete Lockers Rooms*

Roseburg High School has several athletic facilities located on school property. The facilities include locker rooms for male and female student athletes. In comparing the two facilities, the Oregon Department of Education notes the following:

* Of student athletes that use the locker rooms, 64% of those students are male student athletes (290 total at the time of the department’s investigation) and 36% of those students are female student athletes (161 total at the time of the department’s investigation).
* The locker room for male student athletes is larger than the locker room for female student athletes.
* The locker room for male student athletes contains two banks of lockers. The locker room for female student athletes only contains one bank of lockers.
* The locker room for male student athletes has lockers designated for a single sport, football.
* The locker room for male student athletes has two team rooms whereas the locker room for female student athletes has one team room. Each team room used by male student athletes is roughly twice as large as the team room used by female student athletes.
* When male student athlete teams from other school districts visit, Roseburg High School allows those teams to use the locker room for female student athletes. When female student athlete teams from other districts visit, the teams share the locker room for female student athletes with Roseburg High School students and use a classroom to store equipment and clothes.

The department has identified many disparities between the locker room used by male student athletes and the locker room used by female student athletes. The locker room used by male student athletes is larger. The locker room used by male student athletes has two team rooms whereas the locker room used by female student athletes has one team room. Each team room used by male student athletes is roughly twice as large as the team room used by female student athletes. Whereas the locker room for male student athletes contains two banks of lockers – one of which is used for a single sport, football –the locker room for female student athletes only contains one bank of lockers, used by all female student athlete teams. Finally, when other district student teams visit, the male student athletes of those districts may use the locker room designated for Roseburg High School’s female student athletes. In contrast, the female student athletes of those districts share the locker room designated for Roseburg High School’s female students. Those female student athletes also must use a classroom to store their equipment and clothes.

With respect to the locker rooms, the department did not identify any offsetting benefits. However, the department does note that at the time of its investigation, nearly twice as many male student athletes used the locker room designated for male student athletes as female student athletes used the locker room designated for female student athletes. The difference in size between the two locker rooms is equitable *insofar* as the number of student athletes that access the locker rooms is relative to the size of the locker rooms. Notably, this explanation for the difference in size does not apply to the team rooms, where male student athletes have access to roughly four times the amount of space as female student athletes. For the size of team rooms to be equitable, four times the number of male student athletes would have to make use of the rooms designated for male student athletes compared to the number of female student athletes who make use of the room designated for female student athletes. Furthermore, two teams may use the rooms designated for male student athletes simultaneously whereas female student athletes do not have that luxury.

1. *Analysis of All Available Student Athlete Programs and Program Components for Purposes of Determining Other Disparities or Offsetting Benefits*

Along with Legion Field, Sunshine Fields, Stewart Field A, and Stewart Field B, the district uses additional facilities at Stewart Park and has two other facilities located off school property: Fir Groves Fields and Roseburg Country Club. Male student athletes and female student athletes have equal access to these facilities.

Along with the locker rooms, the district has several other facilities located on campus, including two gyms, two rooms where teams can meet, a weight room, a multi-use athletic field, and an open field. As with Fir Groves Fields and Roseburg Country Club, male student athletes and female student athletes have equal access to these facilities.

In consideration of the access afforded by these facilities in conjunction with the access afforded by the fields used for baseball and softball, the Oregon Department of Education notes the following:

* 65% of male student athletes and 61% of female student athletes have access to on-campus athletic facilities for competitions. This disparity is partly due to the fact that a lower percentage of male student athletes play baseball than female student athletes play softball.
* 58% of male student athletes and 49% of female student athletes have access to on-campus athletic facilities for practice. Again, this disparity is partly due to the fact that a lower percentage of male student athletes play baseball than female student athletes play softball.
* 25% of male student athletes and 37% of female student athletes have access to athletic facilities located within 1.5 miles of Roseburg High School for competitions and 32% of male student athletes and 49% of female student athletes have access to athletic facilities located within 1.5 miles of the high school for practice. This disparity is the direct result of the junior varsity and freshman baseball teams playing at Sunshine Fields.
* Ten percent of male student athletes and two percent of female student athletes have access to athletic facilities located within four to six miles of the high school for competitions and practice. Again, this disparity is the direct result of the junior varsity and freshman baseball teams playing at Sunshine Fields.
* Of the student athletes that play on a field, 81% of male student athletes and 53% of female student athletes have access to a turf field for competition and 64% of male student athletes and two percent of female student athletes have access to a turf field for practice. This disparity is the result of Legion Filed using turf and the softball fields using grass and dirt as well as the use of a grass field for the football and soccer teams.
* 77% of male student athletes and 76% of female student athletes have access to a scoreboard.
* 83% of male student athletes and 79% of female student athletes have access to facilities that are capable of being closed, locked, or monitored for competition and 75% of male student athletes and 67% of female student athletes have access to such facilities for practice. Again, this disparity is the direct result of Legion Field being enclosed and capable of being closed and locked and the softball fields not being enclosed.
* Most student facilities are not equipped to sell tickets or concessions. Of those that do, they are equipped to monitor spectators for ticketed entry and sell concessions, like Legion Field.
* Most student teams with spectator seating share facilities and, thus, have the same quantity and quality of seating for both male and female student athletes. Of the student athlete teams that do not share facilities, only Legion Field has backed, covered seating. In contrast, the softball teams have metal bleachers.

In consideration of the evidence, the department finds that the overall disparity between the provision of equipment, supplies, locker rooms, training facilities, competitive facilities, and other facilities to male student athletes and female student athletes is the direct result of the disparities between: (1) Legion Field and Stewart Field A, (2) the batting cages adjacent to Legion Field and the batting cages adjacent to Stewart Field A, (3) Sunshine Fields and Stewart Field B, and (4) the locker room designated for use by male student athletes and the locker room designated for use by female student athletes.

The department notes that one program component inures to the benefit of female student athletes: a greater percentage of female student athlete facilities are located closer to Roseburg High School. However, that one program component does not counterbalance the other disparities at issue in this case. Furthermore, as discussed above, that one program component is also an indirect cause of qualitative differences between Sunshine Fields and Stewart Field B – such as Stewart Field B being covered by garbage and toxic waste – to the detriment of female student athletes.

**PRELIMINARY CONCLUSIONS**

In conclusion, the Oregon Department of Education finds that Roseburg School District may have provided different aids, benefits, or services, and provided aids, benefits, and services in a different manner, to male student athletes and female student athletes in violation of OAR 581-021-0045(3)(b), denied female student athletes aids, benefits, or services in violation of OAR 581-021-0045(3)(c), or otherwise limited female student athletes enjoyment of a right, privilege, advantage, or opportunity in violation of OAR 581-021-0045(3)(f). Specifically, the department finds that there are disparities between male student athletes and female student athletes in the aforementioned provision of equipment, supplies, locker rooms, training facilities, competitive facilities, and other facilities. These disparities exist between (1) Legion Field and Stewart Field A, (2) the batting cages adjacent to Legion Field and the batting cages adjacent to Stewart Field A, (3) Sunshine Fields and Stewart Field B, and (4) the locker room designated for use by male student athletes and the locker room designated for use by female student athletes.

Accordingly, the department encourages the district to reach an agreement with Complainant through conciliation. If the district cannot reach an agreement with Complainant through conciliation within 30 days, or at a time otherwise agreed to by the parties, the department will issue a final order on the matter.

If Complainant or the district wishes to use the department as a resource during conciliation, Complainant or the district may contact the department.[[36]](#footnote-36)

If you have any questions, please contact me.

Sincerely,



Mark Mayer, Complaint and Appeals Coordinator

Office of the Department

Mark.Mayer@state.or.us

1. The administrative rules governing the Oregon Department of Education’s appeals process are OAR 581-002-0001 to 581-002-0023. [↑](#footnote-ref-1)
2. OAR 581-002-0009. [↑](#footnote-ref-2)
3. OAR 581-002-0009(3)(a)(B). [↑](#footnote-ref-3)
4. OAR 581-002-0009(3)(b). [↑](#footnote-ref-4)
5. OAR 581-002-0009(3)(a)(A). [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. OAR 581-002-0011. [↑](#footnote-ref-7)
8. OAR 581-002-0011(8). [↑](#footnote-ref-8)
9. OAR 581-002-0017(2). [↑](#footnote-ref-9)
10. *See* Education Amendments of 1972, Public Law No. 92-318, Title IX, §§ 901-907 (codified at 20 U.S.C. §1681 *et seq.*). [↑](#footnote-ref-10)
11. Godfrey Sanne, *The News Review,* July 9, 2017, *available at* [*https://www.nrtoday.com/news/government/city/ roseburg\_government/artificial-turf-at-legion-field-may-lead-to-title-ix-implications-for-roseburg-high-school/ article\_280bc2ea-da27-55d7-91af-07fdd2970c80.html*](https://www.nrtoday.com/news/government/city/%20roseburg_government/artificial-turf-at-legion-field-may-lead-to-title-ix-implications-for-roseburg-high-school/%20article_280bc2ea-da27-55d7-91af-07fdd2970c80.html). [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. OAR 581-002-0005(1)(a)(C) (stating that the Oregon Department of Education will accept a complaint on appeal if 90 days has passed since the complaint was filed with the school district and the district has failed to resolve the matter). [↑](#footnote-ref-15)
16. *See* United States Department of Education Office for Civil Rights, *Dear Colleague Letter, September 18, 2018*, 2(2018), *available at* [Dear Colleague Letter from Assistant Secretary for Civil Rights Stephanie Monroe (PDF) (ed.gov)](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.pdf) (specifying that the Office for Civil Rights will consider, when evaluating whether an athletic opportunity is an “athletic activity” for purposes of federal Title IX law, the office will consider whether

the operating budget, support services (including academic, sports medicine and strength and conditioning support) and coaching staff are provided in a manner consistent with established varsity sports;

and whether

the team prepares for and engages in competition in a manner consistent with established varsity sports in the institution’s intercollegiate or interscholastic athletics program[.] [↑](#footnote-ref-16)
17. The department necessarily must point out that ORS 659.850 and OAR 581-021-0045 apply to all sexes, whether male, female, transgender, gender neutral, or otherwise non-binary. The statute and rule demand that all sexes have equal access to student athletics, whether that access is provided for by the creation of athletic teams with quantitatively and qualitatively equal athletic opportunities and facilities or an equal opportunity to join existing athletic programs. [↑](#footnote-ref-17)
18. On the survey, some female student athletes did demonstrate an interest in additional sports. However, too few female student athletes demonstrated an interest in those sports to constitute the team necessary to play that sport. [↑](#footnote-ref-18)
19. ORS 659.850(2). OAR 581-021-0045(2) applies this prohibition specifically to the types of schools regulated by the Department: “No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.” [↑](#footnote-ref-19)
20. ORS 659.850(1). OAR 581-021-0045(1)(a) uses an identical definition for “discrimination” for purposes of the Department’s regulatory authority over public elementary and secondary schools. [↑](#footnote-ref-20)
21. *See* Education Amendments of 1972, Public Law No. 92-318, Title IX, §§ 901-907 (codified at 20 U.S.C. §1681 *et seq.*). [↑](#footnote-ref-21)
22. Federal laws, regulations, judicial opinions, and documents published by the Office for Civil Rights interpreting those laws, regulations, opinions, and documents use different terms to describe schools and the other educational entities to which they apply. This order uses the term “educational institution” in lieu of those terms in order to communicate the content of the laws, regulations, and documents in an easy to understand manner. [↑](#footnote-ref-22)
23. 34 C.F.R. 106.4(a). [↑](#footnote-ref-23)
24. With respect to the department’s application of ORS 659.850 and OAR 581-021-0045 to all sexes, references to male and female student athletes in federal law and regulation, such as the qualifier “both” in this provision, do not affect the department’s wide latitude to interpret and apply the statute and rule. The department will use Title IX for guidance on which legal standards to apply to all sexes, but it will take a broader approach to their actual application. As stated in footnote 17, the statute and rule demand that transgender, gender neutral, and other non-binary sexes have equal access to student athletics, whether that access is provided for by the creation of athletic teams with qualitatively equal athletic facilities or an equal opportunity to join existing teams. [↑](#footnote-ref-24)
25. 134 C.F.R. 106.41(c). The provision also lists the following factors: travel and per diem allowance, opportunity to receive coaching and academic tutoring, assignment and compensation of coaches and tutors, provision of housing and dining facilities and services, and publicity. This order does not explicitly address these factors because either there is no evidence of any disparity in their availability to all sexes attending school in Roseburg School District *or* they do not apply to Roseburg High School’s athletic programs. [↑](#footnote-ref-25)
26. *See* United States Department of Education Office for Civil Rights, Letter in Response to Steven Geoffery Giesler’s Petition to Repeal, Amend, and Clarify Rules Applying Title IX to High School Athletics, 2 (March 27, 2008), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/title-ix-2008-0327.pdf> (explaining that numerous federal courts have held that the Office for Civil Rights 1979 Policy Interpretation of Title IX law is entitled to substantial deference). *See also Neal v. Board of Trustees of California State Universities*, 198 F.3d 763, 770 (9th Cir. 1999) (deferring to the Office for Civil Rights 1979 Interpretation of Title IX law). [↑](#footnote-ref-26)
27. United States Department of Education Office for Civil Rights, Letter in Response to Steven Geoffery Giesler’s Petition to Repeal, Amend, and Clarify Rules Applying Title IX to High School Athletics. Multiple federal courts have held that the United States Department of Education Office for Civil Rights has the authority to apply Title IX to high school athletics. *McCormick v. School District of Mamaroneck*, 370 F.3d 275, 290-291 (2d Cir. 2004); *Horner v. Kentucky High School Athletic Association*, 43 F.3d 265, 273 (6th Cir. 1994); *Williams v. School District of Bethlehem*, 998 F.2d 168, 171 (3d Cir. 1993). For example, the Sixth Circuit Court of Appeals used Title IX to assess whether a state high school athletic association failed to effectively accommodate the athletic interests and abilities of female high school student athletes. *Horner,* 43 F.3d at 274-275. [↑](#footnote-ref-27)
28. United States Department of Education Office for Civil Rights, *Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test – Part Three*, iii (2005), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/200503017-additional-clarification-three-part-test.pdf>*.*  [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. 858 F. Supp. 2d 1093, 1110 (S.D.Cal. 2012) (internal quotes omitted). [↑](#footnote-ref-30)
31. *Id. See* footnote 24 for further explanation. [↑](#footnote-ref-31)
32. *Id.* [↑](#footnote-ref-32)
33. United States Department of Education Office for Civil Rights, *Letter to Dr. Dion Betts, Superintendent, Chambersburg Area School District*, 2 -3 (June 25, 2020), *available at* [Chambersburg Area School District (PDF) (ed.gov)](https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03191345-a.pdf) (emphasis added). [↑](#footnote-ref-33)
34. *Id.* at 3. [↑](#footnote-ref-34)
35. *See* United States Department of Education Office for Civil Rights, *Letter to Dr. Dion Betts, Superintendent, Chambersburg Area School District* at 3. [↑](#footnote-ref-35)
36. The department’s conciliator for this case is Patricia Stoneroad. She may be reached by email at patricia.stoneroad@ode.state.us or by phone at (503) 947-5915. [↑](#footnote-ref-36)