

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

JEFFERSON COUNTY JOINT SCHOOL DISTRICT #251
201 IDAHO AVE
RIGBY, IDAHO 83442

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 JEFFERSON COUNTY JOINT SCHOOL DISTRICT #251 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts RIGBY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 JEFFERSON COUNTY JOINT SCHOOL DISTRICT #251 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts RIGBY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of RIGBY HIGH SCHOOL in the District is -20.0% percentage points.

11. If RIGBY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 107 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's RIGBY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -20.0% or more percentage points. For example, RIGBY HIGH SCHOOL reports a 2010 -20.0% percentage point gap between the percentage of girls enrolled (450) compared to boys enrolled (452) and the percentage of athletes who are girls (160) compared to boys (375). If RIGBY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 107 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its RIGBY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
RIGBY HIGH SCHOOL	N/A	N/A	-20.0%

14. For these reasons, RIGBY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹

15. At RIGBY HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -20.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's RIGBY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's RIGBY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that RIGBY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²

18. By not providing equal opportunities for its female RIGBY HIGH SCHOOL students, the JEFFERSON COUNTY JOINT SCHOOL DISTRICT #251 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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 *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).³

25. 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.

26. The JEFFERSON COUNTY JOINT SCHOOL DISTRICT #251 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female RIGBY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate RIGBY HIGH SCHOOL in the JEFFERSON COUNTY JOINT SCHOOL DISTRICT #251 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

³ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

ST MARIES SCHOOL DISTRICT #41
424 HELLS GULCH RD
ST MARIES, IDAHO 83861

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 ST MARIES SCHOOL DISTRICT #41 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts ST MARIES HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 ST MARIES SCHOOL DISTRICT #41 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts ST MARIES HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of ST MARIES HIGH SCHOOL in the District is - 14.1% percentage points.

11. If ST MARIES HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 37 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s ST MARIES HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -14.1% or more percentage points. For example, ST MARIES HIGH SCHOOL reports a 2010 -14.1% percentage point gap between the percentage of girls enrolled (173) compared to boys enrolled (185) and the percentage of athletes who are girls (90) compared to boys (173). If ST MARIES HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 37 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its ST MARIES HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
ST MARIES HIGH SCHOOL	N/A	N/A	-14.1%

14. For these reasons, ST MARIES HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.²⁸

15. At ST MARIES HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -14.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s ST MARIES HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s ST MARIES HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

²⁸ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that ST MARIES HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²⁹

18. By not providing equal opportunities for its female ST MARIES HIGH SCHOOL students, the ST MARIES SCHOOL DISTRICT #41 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

²⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).³⁰

25. 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.

26. The ST MARIES SCHOOL DISTRICT #41 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female ST MARIES HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate ST MARIES HIGH SCHOOL in the ST MARIES SCHOOL DISTRICT #41 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 Seattle 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).

³⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

WEST SIDE JOINT DISTRICT
P.O. BOX 89
DAYTON, IDAHO 83232

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 WEST SIDE JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts WEST SIDE SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 WEST SIDE JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts WEST SIDE SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WEST SIDE SENIOR HIGH SCHOOL in the District is -13.6% percentage points.
11. If WEST SIDE SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 31 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s WEST SIDE SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -13.6% or more percentage points. For example, WEST SIDE SENIOR HIGH SCHOOL reports a 2010 -13.6% percentage point gap between the percentage of girls enrolled (84) compared to boys enrolled (88) and the percentage of athletes who are girls (81) compared to boys (149). If WEST SIDE SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 31 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its WEST SIDE SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
WEST SIDE SENIOR HIGH SCHOOL	N/A	-7.0%	-13.6%

14. For these reasons, WEST SIDE SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.³¹

15. At WEST SIDE SENIOR HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -13.6% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s WEST SIDE SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s WEST SIDE SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

³¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that WEST SIDE SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.³²

18. By not providing equal opportunities for its female WEST SIDE SENIOR HIGH SCHOOL students, the WEST SIDE JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

³² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).³³

25. 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.

26. The WEST SIDE JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WEST SIDE SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate WEST SIDE SENIOR HIGH SCHOOL in the WEST SIDE JOINT DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

³³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

CASSIA COUNTY JOINT SCHOOL DISTRICT #151
237 E 19TH ST
BURLEY, IDAHO 83318

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 CASSIA COUNTY JOINT SCHOOL DISTRICT #151 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BURLEY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 CASSIA COUNTY JOINT SCHOOL DISTRICT #151 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BURLEY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BURLEY HIGH SCHOOL in the District is - 13.5% percentage points.
11. If BURLEY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 64 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s BURLEY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -13.5% or more percentage points. For example, BURLEY HIGH SCHOOL reports a 2010 -13.5% percentage point gap between the percentage of girls enrolled (411) compared to boys enrolled (426) and the percentage of athletes who are girls (169) compared to boys (306). If BURLEY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 64 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BURLEY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BURLEY HIGH SCHOOL	N/A	N/A	-13.5%

14. For these reasons, BURLEY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.³⁴

15. At BURLEY HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -13.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s BURLEY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s BURLEY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

³⁴ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that BURLEY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.³⁵

18. By not providing equal opportunities for its female BURLEY HIGH SCHOOL students, the CASSIA COUNTY JOINT SCHOOL DISTRICT #151 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

³⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).³⁶

25. 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.

26. The CASSIA COUNTY JOINT SCHOOL DISTRICT #151 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BURLEY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BURLEY HIGH SCHOOL in the CASSIA COUNTY JOINT SCHOOL DISTRICT #151 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

³⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MADISON SCHOOL DISTRICT #321
290 N 1ST E
REXBURG, IDAHO 83440

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MADISON SCHOOL DISTRICT #321 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MADISON HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MADISON SCHOOL DISTRICT #321 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MADISON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MADISON HIGH SCHOOL in the District is - 13.4% percentage points.
11. If MADISON HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 82 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MADISON HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -13.4% or more percentage points. For example, MADISON HIGH SCHOOL reports a 2010 -13.4% percentage point gap between the percentage of girls enrolled (510) compared to boys enrolled (476) and the percentage of athletes who are girls (235) compared to boys (378). If MADISON HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 82 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MADISON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MADISON HIGH SCHOOL	N/A	N/A	-13.4%

14. For these reasons, MADISON HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.³⁷

15. At MADISON HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -13.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MADISON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MADISON HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

³⁷ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that MADISON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.³⁸

18. By not providing equal opportunities for its female MADISON HIGH SCHOOL students, the MADISON SCHOOL DISTRICT #321 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

³⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).³⁹

25. 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.

26. The MADISON SCHOOL DISTRICT #321 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MADISON HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MADISON HIGH SCHOOL in the MADISON SCHOOL DISTRICT #321 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 Seattle 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).

³⁹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

RIRIE JOINT DISTRICT
P.O. BOX 508
RIRIE, IDAHO 83443

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 RIRIE JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts RIRIE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 RIRIE JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts RIRIE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of RIRIE HIGH SCHOOL in the District is -13.4% percentage points.
11. If RIRIE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 32 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's RIRIE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -13.4% or more percentage points. For example, RIRIE HIGH SCHOOL reports a 2010 -13.4% percentage point gap between the percentage of girls enrolled (95) compared to boys enrolled (106) and the percentage of athletes who are girls (80) compared to boys (156). If RIRIE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 32 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its RIRIE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
RIRIE HIGH SCHOOL	N/A	-9.8%	-13.4%

14. For these reasons, RIRIE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴⁰

15. At RIRIE HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -13.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's RIRIE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's RIRIE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that RIRIE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁴¹

⁴⁰ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

⁴¹ Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of

18. By not providing equal opportunities for its female RIRIE HIGH SCHOOL students, the RIRIE JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.

(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.

24. 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).⁴²

25. 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.

26. The RIRIE JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female RIRIE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate RIRIE HIGH SCHOOL in the RIRIE JOINT 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 Seattle 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 Seattle 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).

⁴² As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

d. The Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

POCATELLO SCHOOL DISTRICT NO.25
3115 POLELINE RD
POCATELLO, IDAHO 83201

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 POCATELLO SCHOOL DISTRICT NO.25 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CENTURY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 POCATELLO SCHOOL DISTRICT NO.25 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CENTURY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CENTURY HIGH SCHOOL in the District is - 13.3% percentage points.
11. If CENTURY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 57 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s CENTURY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -13.3% or more percentage points. For example, CENTURY HIGH SCHOOL reports a 2010 -13.3% percentage point gap between the percentage of girls enrolled (536) compared to boys enrolled (519) and the percentage of athletes who are girls (162) compared to boys (270). If CENTURY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 57 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CENTURY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CENTURY HIGH SCHOOL	-11.3%	-13.6%	-13.3%

14. For these reasons, CENTURY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴³

15. At CENTURY HIGH SCHOOL, the participation gap has increased or continued from -11.3% percentage points in 2004 to -13.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s CENTURY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s CENTURY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁴³ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that CENTURY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁴⁴

18. By not providing equal opportunities for its female CENTURY HIGH SCHOOL students, the POCATELLO SCHOOL DISTRICT NO.25 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁴⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁴⁵

25. 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.

26. The POCATELLO SCHOOL DISTRICT NO.25 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CENTURY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CENTURY HIGH SCHOOL in the POCATELLO SCHOOL DISTRICT NO.25 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁴⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

GOODING JOINT DISTRICT
1050 7TH AVE W
GOODING, IDAHO 83330

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 GOODING JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts GOODING HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 GOODING JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts GOODING HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of GOODING HIGH SCHOOL in the District is - 13.1% percentage points.
11. If GOODING HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 40 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s GOODING HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -13.1% or more percentage points. For example, GOODING HIGH SCHOOL reports a 2010 -13.1% percentage point gap between the percentage of girls enrolled (146) compared to boys enrolled (149) and the percentage of athletes who are girls (111) compared to boys (194). If GOODING HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 40 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its GOODING HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
GOODING HIGH SCHOOL	N/A	5.1%	-13.1%

14. For these reasons, GOODING HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴⁶

15. At GOODING HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -13.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s GOODING HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s GOODING HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁴⁶ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that GOODING HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁴⁷

18. By not providing equal opportunities for its female GOODING HIGH SCHOOL students, the GOODING JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁴⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁴⁸

25. 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.

26. The GOODING JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female GOODING HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate GOODING HIGH SCHOOL in the GOODING JOINT 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 Seattle 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).

⁴⁸ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

TWIN FALLS SCHOOL DISTRICT #411
201 MAIN AVE W
TWIN FALLS, IDAHO 83301

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 TWIN FALLS SCHOOL DISTRICT #411 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts TWIN FALLS HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 TWIN FALLS SCHOOL DISTRICT #411 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts TWIN FALLS HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of TWIN FALLS HIGH SCHOOL in the District is -12.7% percentage points.
11. If TWIN FALLS HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 71 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s TWIN FALLS HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -12.7% or more percentage points. For example, TWIN FALLS HIGH SCHOOL reports a 2010 -12.7% percentage point gap between the percentage of girls enrolled (585) compared to boys enrolled (567) and the percentage of athletes who are girls (215) compared to boys (349). If TWIN FALLS HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 71 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its TWIN FALLS HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
TWIN FALLS HIGH SCHOOL	N/A	N/A	-12.7%

14. For these reasons, TWIN FALLS HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴⁹

15. At TWIN FALLS HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -12.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s TWIN FALLS HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s TWIN FALLS HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁴⁹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that TWIN FALLS HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵⁰

18. By not providing equal opportunities for its female TWIN FALLS HIGH SCHOOL students, the TWIN FALLS SCHOOL DISTRICT #411 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁵¹

25. 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.

26. The TWIN FALLS SCHOOL DISTRICT #411 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female TWIN FALLS HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate TWIN FALLS HIGH SCHOOL in the TWIN FALLS SCHOOL DISTRICT #411 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁵¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BOISE INDEPEDENT SCHOOL DISTRICT #1
8169 W VICTORY RD
BOISE,IDAHO 83709

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BOISE INDEPEDENT SCHOOL DISTRICT #1 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BORAH HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BOISE INDEPEDENT SCHOOL DISTRICT #1 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BORAH HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BORAH HIGH SCHOOL in the District is - 12.4% percentage points.
11. If BORAH HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 79 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s BORAH HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -12.4% or more percentage points. For example, BORAH HIGH SCHOOL reports a 2010 -12.4% percentage point gap between the percentage of girls enrolled (652) compared to boys enrolled (679) and the percentage of athletes who are girls (231) compared to boys (401). If BORAH HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 79 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BORAH HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BORAH HIGH SCHOOL	N/A	N/A	-12.4%

14. For these reasons, BORAH HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁵²

15. At BORAH HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -12.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s BORAH HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s BORAH HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

⁵² "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that BORAH HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵³

18. By not providing equal opportunities for its female BORAH HIGH SCHOOL students, the BOISE INDEPEDENT SCHOOL DISTRICT #1 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁵⁴

25. 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.

26. The BOISE INDEPEDENT SCHOOL DISTRICT #1 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BORAH HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BORAH HIGH SCHOOL in the BOISE INDEPEDENT SCHOOL DISTRICT #1 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁵⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

PRESTON JOINT DISTRICT
120 E 2ND S
PRESTON, IDAHO 83263

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 PRESTON JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts PRESTON HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 PRESTON JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts PRESTON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of PRESTON HIGH SCHOOL in the District is - 12.4% percentage points.
11. If PRESTON HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 52 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's PRESTON HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -12.4% or more percentage points. For example, PRESTON HIGH SCHOOL reports a 2010 -12.4% percentage point gap between the percentage of girls enrolled (330) compared to boys enrolled (306) and the percentage of athletes who are girls (165) compared to boys (253). If PRESTON HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 52 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its PRESTON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
PRESTON HIGH SCHOOL	N/A	-12.1%	-12.4%

14. For these reasons, PRESTON HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁵⁵

15. At PRESTON HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -12.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's PRESTON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's PRESTON HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁵⁵ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that PRESTON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵⁶

18. By not providing equal opportunities for its female PRESTON HIGH SCHOOL students, the PRESTON JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁵⁷

25. 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.

26. The PRESTON JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female PRESTON HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate PRESTON HIGH SCHOOL in the PRESTON JOINT 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 Seattle 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).

⁵⁷ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

POCATELLO SCHOOL DISTRICT NO.25
3115 POLELINE RD
POCATELLO, IDAHO 83201

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 POCATELLO SCHOOL DISTRICT NO.25 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts POCATELLO SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 POCATELLO SCHOOL DISTRICT NO.25 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts POCATELLO SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of POCATELLO SENIOR HIGH SCHOOL in the District is -18.3% percentage points.

11. If POCATELLO SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 97 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's POCATELLO SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -18.3% or more percentage points. For example, POCATELLO SENIOR HIGH SCHOOL reports a 2010 -18.3% percentage point gap between the percentage of girls enrolled (546) compared to boys enrolled (568) and the percentage of athletes who are girls (162) compared to boys (366). If POCATELLO SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 97 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its POCATELLO SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
POCATELLO SENIOR HIGH SCHOOL	-13.9%	-12.2%	-18.3%

14. For these reasons, POCATELLO SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴

15. At POCATELLO SENIOR HIGH SCHOOL, the participation gap has increased or continued from -13.9% percentage points in 2004 to -18.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's POCATELLO SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁴ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's POCATELLO SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that POCATELLO SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵

18. By not providing equal opportunities for its female POCATELLO SENIOR HIGH SCHOOL students, the POCATELLO SCHOOL DISTRICT NO.25 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁶

25. 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.

26. The POCATELLO SCHOOL DISTRICT NO.25 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female POCATELLO SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate POCATELLO SENIOR HIGH SCHOOL in the POCATELLO SCHOOL DISTRICT NO.25 to determine whether they are

⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

TWIN FALLS SCHOOL DISTRICT #411
201 MAIN AVE W
TWIN FALLS, IDAHO 83301

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 TWIN FALLS SCHOOL DISTRICT #411 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CANYON RIDGE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 TWIN FALLS SCHOOL DISTRICT #411 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CANYON RIDGE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CANYON RIDGE HIGH SCHOOL in the District is -12.3% percentage points.

11. If CANYON RIDGE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 32 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's CANYON RIDGE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -12.3% or more percentage points. For example, CANYON RIDGE HIGH SCHOOL reports a 2010 -12.3% percentage point gap between the percentage of girls enrolled (433) compared to boys enrolled (492) and the percentage of athletes who are girls (89) compared to boys (169). If CANYON RIDGE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 32 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CANYON RIDGE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CANYON RIDGE HIGH SCHOOL	N/A	N/A	-12.3%

14. For these reasons, CANYON RIDGE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁵⁸

15. At CANYON RIDGE HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -12.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's CANYON RIDGE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁵⁸ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's CANYON RIDGE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that CANYON RIDGE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵⁹

18. By not providing equal opportunities for its female CANYON RIDGE HIGH SCHOOL students, the TWIN FALLS SCHOOL DISTRICT #411 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁵⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁶⁰

25. 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.

26. The TWIN FALLS SCHOOL DISTRICT #411 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CANYON RIDGE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CANYON RIDGE HIGH SCHOOL in the TWIN FALLS SCHOOL DISTRICT #411 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁶⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

IDAHO FALLS SCHOOL DISTRICT #91
690 JOHN ADAMS PKWY
IDAHO FALLS, IDAHO 83401

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 IDAHO FALLS SCHOOL DISTRICT #91 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SKYLINE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 IDAHO FALLS SCHOOL DISTRICT #91 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SKYLINE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SKYLINE HIGH SCHOOL in the District is - 12.2% percentage points.
11. If SKYLINE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 66 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s SKYLINE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -12.2% or more percentage points. For example, SKYLINE HIGH SCHOOL reports a 2010 -12.2% percentage point gap between the percentage of girls enrolled (489) compared to boys enrolled (546) and the percentage of athletes who are girls (189) compared to boys (350). If SKYLINE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 66 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SKYLINE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SKYLINE HIGH SCHOOL	N/A	N/A	-12.2%

14. For these reasons, SKYLINE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁶¹

15. At SKYLINE HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -12.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s SKYLINE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s SKYLINE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

⁶¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that SKYLINE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁶²

18. By not providing equal opportunities for its female SKYLINE HIGH SCHOOL students, the IDAHO FALLS SCHOOL DISTRICT #91 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁶² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁶³

25. 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.

26. The IDAHO FALLS SCHOOL DISTRICT #91 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SKYLINE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SKYLINE HIGH SCHOOL in the IDAHO FALLS SCHOOL DISTRICT #91 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁶³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

ABERDEEN SCHOOL DISTRICT
P.O. BOX 610
ABERDEEN, IDAHO 83210

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 ABERDEEN SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts ABERDEEN HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 ABERDEEN SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts ABERDEEN HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of ABERDEEN HIGH SCHOOL in the District is - 12.1% percentage points.
11. If ABERDEEN HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 25 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s ABERDEEN HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -12.1% or more percentage points. For example, ABERDEEN HIGH SCHOOL reports a 2010 -12.1% percentage point gap between the percentage of girls enrolled (113) compared to boys enrolled (129) and the percentage of athletes who are girls (72) compared to boys (136). If ABERDEEN HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 25 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its ABERDEEN HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
ABERDEEN HIGH SCHOOL	-6.9%	-15.8%	-12.1%

14. For these reasons, ABERDEEN HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁶⁴

15. At ABERDEEN HIGH SCHOOL, the participation gap has increased or continued from -6.9% percentage points in 2004 to -12.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s ABERDEEN HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s ABERDEEN HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁶⁴ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that ABERDEEN HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁶⁵

18. By not providing equal opportunities for its female ABERDEEN HIGH SCHOOL students, the ABERDEEN SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁶⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁶⁶

25. 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.

26. The ABERDEEN SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female ABERDEEN HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate ABERDEEN HIGH SCHOOL in the ABERDEEN SCHOOL DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁶⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

WEISER SCHOOL DISTRICT #431
925 PIONEER RD
WEISER, IDAHO 83672

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 WEISER SCHOOL DISTRICT #431 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts WEISER HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 WEISER SCHOOL DISTRICT #431 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts WEISER HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WEISER HIGH SCHOOL in the District is - 11.8% percentage points.
11. If WEISER HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 57 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s WEISER HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -11.8% or more percentage points. For example, WEISER HIGH SCHOOL reports a 2010 -11.8% percentage point gap between the percentage of girls enrolled (247) compared to boys enrolled (269) and the percentage of athletes who are girls (174) compared to boys (308). If WEISER HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 57 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its WEISER HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
WEISER HIGH SCHOOL	N/A	N/A	-11.8%

14. For these reasons, WEISER HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁶⁷

15. At WEISER HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -11.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s WEISER HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s WEISER HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

⁶⁷ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that WEISER HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁶⁸

18. By not providing equal opportunities for its female WEISER HIGH SCHOOL students, the WEISER SCHOOL DISTRICT #431 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁶⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁶⁹

25. 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.

26. The WEISER SCHOOL DISTRICT #431 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WEISER HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate WEISER HIGH SCHOOL in the WEISER SCHOOL DISTRICT #431 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 Seattle 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).

⁶⁹ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

KIMBERLY SCHOOL DISTRICT #414
141 CENTER ST W
KIMBERLY, IDAHO 83341

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 KIMBERLY SCHOOL DISTRICT #414 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts KIMBERLY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 KIMBERLY SCHOOL DISTRICT #414 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts KIMBERLY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of KIMBERLY HIGH SCHOOL in the District is - 11.5% percentage points.
11. If KIMBERLY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 38 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's KIMBERLY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -11.5% or more percentage points. For example, KIMBERLY HIGH SCHOOL reports a 2010 -11.5% percentage point gap between the percentage of girls enrolled (227) compared to boys enrolled (210) and the percentage of athletes who are girls (135) compared to boys (199). If KIMBERLY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 38 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its KIMBERLY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
KIMBERLY HIGH SCHOOL	N/A	N/A	-11.5%

14. For these reasons, KIMBERLY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷⁰

15. At KIMBERLY HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -11.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's KIMBERLY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's KIMBERLY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁷⁰ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that KIMBERLY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁷¹

18. By not providing equal opportunities for its female KIMBERLY HIGH SCHOOL students, the KIMBERLY SCHOOL DISTRICT #414 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁷¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁷²

25. 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.

26. The KIMBERLY SCHOOL DISTRICT #414 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female KIMBERLY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate KIMBERLY HIGH SCHOOL in the KIMBERLY SCHOOL DISTRICT #414 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 Seattle 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).

⁷² As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MERIDIAN JOINT SCHOOL DISTRICT #2
1303 E CENTRAL DR
MERIDIAN, IDAHO 83642

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MERIDIAN JOINT SCHOOL DISTRICT #2 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts ROCKY MOUNTAIN HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MERIDIAN JOINT SCHOOL DISTRICT #2 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts ROCKY MOUNTAIN HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of ROCKY MOUNTAIN HIGH SCHOOL in the District is -11.5% percentage points.

11. If ROCKY MOUNTAIN HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 100 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's ROCKY MOUNTAIN HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -11.5% or more percentage points. For example, ROCKY MOUNTAIN HIGH SCHOOL reports a 2010 -11.5% percentage point gap between the percentage of girls enrolled (854) compared to boys enrolled (885) and the percentage of athletes who are girls (329) compared to boys (545). If ROCKY MOUNTAIN HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 100 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its ROCKY MOUNTAIN HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
ROCKY MOUNTAIN HIGH SCHOOL	N/A	N/A	-11.5%

14. For these reasons, ROCKY MOUNTAIN HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷³

15. At ROCKY MOUNTAIN HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -11.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's ROCKY MOUNTAIN HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁷³ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's ROCKY MOUNTAIN HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that ROCKY MOUNTAIN HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁷⁴

18. By not providing equal opportunities for its female ROCKY MOUNTAIN HIGH SCHOOL students, the MERIDIAN JOINT SCHOOL DISTRICT #2 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁷⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁷⁵

25. 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.

26. The MERIDIAN JOINT SCHOOL DISTRICT #2 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female ROCKY MOUNTAIN HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate ROCKY MOUNTAIN HIGH SCHOOL in the MERIDIAN JOINT SCHOOL DISTRICT #2 to determine whether they are

⁷⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BONNEVILLE JOINT SCHOOL DISTRICT NO. 93
3497 N AMMON RD
IDAHO FALLS, IDAHO 83401

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts HILLCREST HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts HILLCREST HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of HILLCREST HIGH SCHOOL in the District is - 11.5% percentage points.

11. If HILLCREST HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 74 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's HILLCREST HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -11.5% or more percentage points. For example, HILLCREST HIGH SCHOOL reports a 2010 -11.5% percentage point gap between the percentage of girls enrolled (659) compared to boys enrolled (658) and the percentage of athletes who are girls (250) compared to boys (398). If HILLCREST HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 74 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its HILLCREST HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
HILLCREST HIGH SCHOOL	-14.5%	-10.5%	-11.5%

14. For these reasons, HILLCREST HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷⁶

15. At HILLCREST HIGH SCHOOL, the participation gap has increased or continued from -14.5% percentage points in 2004 to -11.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's HILLCREST HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁷⁶ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's HILLCREST HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that HILLCREST HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁷⁷

18. By not providing equal opportunities for its female HILLCREST HIGH SCHOOL students, the BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁷⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁷⁸

25. 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.

26. The BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female HILLCREST HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate HILLCREST HIGH SCHOOL in the BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁷⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BEAR LAKE COUNTY DISSTRIC
P.O. BOX 300
PARIS, IDAHO 83261

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BEAR LAKE COUNTY DISSTRIC (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BEAR LAKE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BEAR LAKE COUNTY DISSTRICt receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BEAR LAKE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BEAR LAKE HIGH SCHOOL in the District is - 11.4% percentage points.
11. If BEAR LAKE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 30 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's BEAR LAKE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -11.4% or more percentage points. For example, BEAR LAKE HIGH SCHOOL reports a 2010 -11.4% percentage point gap between the percentage of girls enrolled (157) compared to boys enrolled (159) and the percentage of athletes who are girls (101) compared to boys (163). If BEAR LAKE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 30 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BEAR LAKE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BEAR LAKE HIGH SCHOOL	-9.4%	N/A	-11.4%

14. For these reasons, BEAR LAKE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷⁹

15. At BEAR LAKE HIGH SCHOOL, the participation gap has increased or continued from -9.4% percentage points in 2004 to -11.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's BEAR LAKE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's BEAR LAKE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁷⁹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that BEAR LAKE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸⁰

18. By not providing equal opportunities for its female BEAR LAKE HIGH SCHOOL students, the BEAR LAKE COUNTY DISSTRIC 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁸⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁸¹

25. 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.

26. The BEAR LAKE COUNTY DISSTRIC data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BEAR LAKE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BEAR LAKE HIGH SCHOOL in the BEAR LAKE COUNTY DISSTRIC to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁸¹ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BONNEVILLE JOINT SCHOOL DISTRICT NO. 93
3497 N AMMON RD
IDAHO FALLS, IDAHO 83401

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BONNEVILLE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BONNEVILLE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BONNEVILLE HIGH SCHOOL in the District is -11.2% percentage points.

11. If BONNEVILLE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 58 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's BONNEVILLE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -11.2% or more percentage points. For example, BONNEVILLE HIGH SCHOOL reports a 2010 -11.2% percentage point gap between the percentage of girls enrolled (562) compared to boys enrolled (609) and the percentage of athletes who are girls (193) compared to boys (331). If BONNEVILLE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 58 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BONNEVILLE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BONNEVILLE HIGH SCHOOL	-0.3%	-10.7%	-11.2%

14. For these reasons, BONNEVILLE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁸²

15. At BONNEVILLE HIGH SCHOOL, the participation gap has increased or continued from -0.3% percentage points in 2004 to -11.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's BONNEVILLE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁸² "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's BONNEVILLE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that BONNEVILLE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸³

18. By not providing equal opportunities for its female BONNEVILLE HIGH SCHOOL students, the BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁸³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁸⁴

25. 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.

26. The BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BONNEVILLE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BONNEVILLE HIGH SCHOOL in the BONNEVILLE JOINT SCHOOL DISTRICT NO. 93 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁸⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

CASSIA COUNTY JOINT DISTRICT
237 E 19TH
BURLEY, IDAHO 83318

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 CASSIA COUNTY JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts OAKLEY JR-SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 CASSIA COUNTY JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts OAKLEY JR-SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of OAKLEY JR-SR HIGH SCHOOL in the District is -11.0% percentage points.
11. If OAKLEY JR-SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 17 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s OAKLEY JR-SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -11.0% or more percentage points. For example, OAKLEY JR-SR HIGH SCHOOL reports a 2010 -11.0% percentage point gap between the percentage of girls enrolled (88) compared to boys enrolled (99) and the percentage of athletes who are girls (57) compared to boys (101). If OAKLEY JR-SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 17 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its OAKLEY JR-SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
OAKLEY JR-SR HIGH SCHOOL	-5.8%	N/A	-11.0%

14. For these reasons, OAKLEY JR-SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁸⁵

15. At OAKLEY JR-SR HIGH SCHOOL, the participation gap has increased or continued from -5.8% percentage points in 2004 to -11.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s OAKLEY JR-SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s OAKLEY JR-SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

⁸⁵ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that OAKLEY JR-SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸⁶

18. By not providing equal opportunities for its female OAKLEY JR-SR HIGH SCHOOL students, the CASSIA COUNTY JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁸⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁸⁷

25. 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.

26. The CASSIA COUNTY JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female OAKLEY JR-SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate OAKLEY JR-SR HIGH SCHOOL in the CASSIA COUNTY JOINT DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁸⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BLACKFOOT SCHOOL DISTRICT #55
270 E BRIDGE ST
BLACKFOOT, IDAHO 83221

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BLACKFOOT SCHOOL DISTRICT #55 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BLACKFOOT HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BLACKFOOT SCHOOL DISTRICT #55 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BLACKFOOT HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BLACKFOOT HIGH SCHOOL in the District is -18.1% percentage points.
11. If BLACKFOOT HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 89 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s BLACKFOOT HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -18.1% or more percentage points. For example, BLACKFOOT HIGH SCHOOL reports a 2010 -18.1% percentage point gap between the percentage of girls enrolled (540) compared to boys enrolled (548) and the percentage of athletes who are girls (155) compared to boys (336). If BLACKFOOT HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 89 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BLACKFOOT HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BLACKFOOT HIGH SCHOOL	-10.7%	N/A	-18.1%

14. For these reasons, BLACKFOOT HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷

15. At BLACKFOOT HIGH SCHOOL, the participation gap has increased or continued from -10.7% percentage points in 2004 to -18.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s BLACKFOOT HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s BLACKFOOT HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁷ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that BLACKFOOT HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸

18. By not providing equal opportunities for its female BLACKFOOT HIGH SCHOOL students, the BLACKFOOT SCHOOL DISTRICT #55 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁹

25. 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.

26. The BLACKFOOT SCHOOL DISTRICT #55 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BLACKFOOT HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BLACKFOOT HIGH SCHOOL in the BLACKFOOT SCHOOL DISTRICT #55 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁹ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

WEST BONNER COUNTY DISTRICT
221 MAIN ST
PRIEST RIVER, IDAHO 83856

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 WEST BONNER COUNTY DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts PRIEST RIVER LAMANNA HIGH, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 WEST BONNER COUNTY DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts PRIEST RIVER LAMANNA HIGH does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of PRIEST RIVER LAMANNA HIGH in the District is -10.9% percentage points.

11. If PRIEST RIVER LAMANNA HIGH in the District provided girls with opportunities substantially proportionate to enrollment, an additional 36 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s PRIEST RIVER LAMANNA HIGH that reported athletes in 2010 have a participation gaps of -10.9% or more percentage points. For example, PRIEST RIVER LAMANNA HIGH reports a 2010 -10.9% percentage point gap between the percentage of girls enrolled (210) compared to boys enrolled (214) and the percentage of athletes who are girls (129) compared to boys (205). If PRIEST RIVER LAMANNA HIGH provided girls with proportional athletic opportunities, an additional 36 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its PRIEST RIVER LAMANNA HIGH since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
PRIEST RIVER LAMANNA HIGH	N/A	-3.4%	-10.9%

14. For these reasons, PRIEST RIVER LAMANNA HIGH cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁸⁸

15. At PRIEST RIVER LAMANNA HIGH, the participation gap has increased or continued from N/A percentage points in 2004 to -10.9% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s PRIEST RIVER LAMANNA HIGH indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

⁸⁸ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's PRIEST RIVER LAMANNA HIGH (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that PRIEST RIVER LAMANNA HIGH girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸⁹

18. By not providing equal opportunities for its female PRIEST RIVER LAMANNA HIGH students, the WEST BONNER COUNTY DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁸⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁹⁰

25. 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.

26. The WEST BONNER COUNTY DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female PRIEST RIVER LAMANNA HIGH students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate PRIEST RIVER LAMANNA HIGH in the WEST BONNER COUNTY DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁹⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

FREMONT COUNTY JOINT SCHOOL DISTRICT 215
147 N 2ND W ST
ST ANTHONY, IDAHO 83445

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 FREMONT COUNTY JOINT SCHOOL DISTRICT 215 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SOUTH FREMONT HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 FREMONT COUNTY JOINT SCHOOL DISTRICT 215 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SOUTH FREMONT HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SOUTH FREMONT HIGH SCHOOL in the District is -10.9% percentage points.

11. If SOUTH FREMONT HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 40 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's SOUTH FREMONT HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.9% or more percentage points. For example, SOUTH FREMONT HIGH SCHOOL reports a 2010 -10.9% percentage point gap between the percentage of girls enrolled (232) compared to boys enrolled (240) and the percentage of athletes who are girls (140) compared to boys (226). If SOUTH FREMONT HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 40 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SOUTH FREMONT HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SOUTH FREMONT HIGH SCHOOL	-7.8%	N/A	-10.9%

14. For these reasons, SOUTH FREMONT HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁹¹

15. At SOUTH FREMONT HIGH SCHOOL, the participation gap has increased or continued from -7.8% percentage points in 2004 to -10.9% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's SOUTH FREMONT HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁹¹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's SOUTH FREMONT HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that SOUTH FREMONT HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁹²

18. By not providing equal opportunities for its female SOUTH FREMONT HIGH SCHOOL students, the FREMONT COUNTY JOINT SCHOOL DISTRICT 215 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁹² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁹³

25. 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.

26. The FREMONT COUNTY JOINT SCHOOL DISTRICT 215 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SOUTH FREMONT HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SOUTH FREMONT HIGH SCHOOL in the FREMONT COUNTY JOINT SCHOOL DISTRICT 215 to determine whether

⁹³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

they are providing their female students with equal opportunities to play sports.
34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MOSCOW SCHOOL DISTRICT #281
650 N CLEVELAND
MOSCOW, IDAHO 83843

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MOSCOW SCHOOL DISTRICT #281 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MOSCOW HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MOSCOW SCHOOL DISTRICT #281 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MOSCOW HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MOSCOW HIGH SCHOOL in the District is - 10.8% percentage points.
11. If MOSCOW HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 53 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MOSCOW HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.8% or more percentage points. For example, MOSCOW HIGH SCHOOL reports a 2010 -10.8% percentage point gap between the percentage of girls enrolled (295) compared to boys enrolled (306) and the percentage of athletes who are girls (188) compared to boys (303). If MOSCOW HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 53 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MOSCOW HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MOSCOW HIGH SCHOOL	N/A	N/A	-10.8%

14. For these reasons, MOSCOW HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁹⁴

15. At MOSCOW HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -10.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MOSCOW HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MOSCOW HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁹⁴ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that MOSCOW HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁹⁵

18. By not providing equal opportunities for its female MOSCOW HIGH SCHOOL students, the MOSCOW SCHOOL DISTRICT #281 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁹⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁹⁶

25. 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.

26. The MOSCOW SCHOOL DISTRICT #281 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MOSCOW HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MOSCOW HIGH SCHOOL in the MOSCOW SCHOOL DISTRICT #281 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 Seattle 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).

⁹⁶ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BOISE INDEPEDENT SCHOOL DISTRICT #1
8169 W VICTORY RD
BOISE,IDAHO 83709

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BOISE INDEPEDENT SCHOOL DISTRICT #1 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CAPITAL HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BOISE INDEPEDENT SCHOOL DISTRICT #1 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CAPITAL HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CAPITAL HIGH SCHOOL in the District is - 10.8% percentage points.
11. If CAPITAL HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 69 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s CAPITAL HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.8% or more percentage points. For example, CAPITAL HIGH SCHOOL reports a 2010 -10.8% percentage point gap between the percentage of girls enrolled (662) compared to boys enrolled (725) and the percentage of athletes who are girls (237) compared to boys (404). If CAPITAL HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 69 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CAPITAL HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CAPITAL HIGH SCHOOL	N/A	N/A	-10.8%

14. For these reasons, CAPITAL HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁹⁷

15. At CAPITAL HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -10.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s CAPITAL HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s CAPITAL HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

⁹⁷ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that CAPITAL HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁹⁸

18. By not providing equal opportunities for its female CAPITAL HIGH SCHOOL students, the BOISE INDEPEDENT SCHOOL DISTRICT #1 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁹⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁹⁹

25. 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.

26. The BOISE INDEPEDENT SCHOOL DISTRICT #1 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CAPITAL HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CAPITAL HIGH SCHOOL in the BOISE INDEPEDENT SCHOOL DISTRICT #1 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁹⁹ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MOUNTAIN HOME SCHOOL DISTRICT #193
470 N 3RD E
MOUNTAIN HOME, IDAHO 83647

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MOUNTAIN HOME SCHOOL DISTRICT #193 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MOUNTAIN HOME HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MOUNTAIN HOME SCHOOL DISTRICT #193 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MOUNTAIN HOME HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MOUNTAIN HOME HIGH SCHOOL in the District is -10.4% percentage points.

11. If MOUNTAIN HOME HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 61 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's MOUNTAIN HOME HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.4% or more percentage points. For example, MOUNTAIN HOME HIGH SCHOOL reports a 2010 -10.4% percentage point gap between the percentage of girls enrolled (528) compared to boys enrolled (561) and the percentage of athletes who are girls (222) compared to boys (361). If MOUNTAIN HOME HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 61 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MOUNTAIN HOME HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MOUNTAIN HOME HIGH SCHOOL	N/A	N/A	-10.4%

14. For these reasons, MOUNTAIN HOME HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰⁰

15. At MOUNTAIN HOME HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -10.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's MOUNTAIN HOME HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁰⁰ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's MOUNTAIN HOME HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that MOUNTAIN HOME HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁰¹

18. By not providing equal opportunities for its female MOUNTAIN HOME HIGH SCHOOL students, the MOUNTAIN HOME SCHOOL DISTRICT #193 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁰¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁰²

25. 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.

26. The MOUNTAIN HOME SCHOOL DISTRICT #193 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MOUNTAIN HOME HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MOUNTAIN HOME HIGH SCHOOL in the MOUNTAIN HOME SCHOOL DISTRICT #193 to determine whether they are

¹⁰² As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

CALDWELL SCHOOL DISTRICT
1101 CLEVELAND BLVD
CALDWELL, IDAHO 83605

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 CALDWELL SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CALDWELL SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 CALDWELL SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CALDWELL SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CALDWELL SENIOR HIGH SCHOOL in the District is -10.4% percentage points.

11. If CALDWELL SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 69 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's CALDWELL SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.4% or more percentage points. For example, CALDWELL SENIOR HIGH SCHOOL reports a 2010 -10.4% percentage point gap between the percentage of girls enrolled (777) compared to boys enrolled (806) and the percentage of athletes who are girls (257) compared to boys (407). If CALDWELL SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 69 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CALDWELL SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CALDWELL SENIOR HIGH SCHOOL	-8.4%	-11.7%	-10.4%

14. For these reasons, CALDWELL SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰³

15. At CALDWELL SENIOR HIGH SCHOOL, the participation gap has increased or continued from -8.4% percentage points in 2004 to -10.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's CALDWELL SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁰³ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's CALDWELL SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that CALDWELL SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁰⁴

18. By not providing equal opportunities for its female CALDWELL SENIOR HIGH SCHOOL students, the CALDWELL SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁰⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁰⁵

25. 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.

26. The CALDWELL SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CALDWELL SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CALDWELL SENIOR HIGH SCHOOL in the CALDWELL SCHOOL DISTRICT to determine whether they are providing their

¹⁰⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

KUNA JOINT DISTRICT NO. 3
1360 BOISE ST
KUNA, IDAHO 83634

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 KUNA JOINT DISTRICT NO. 3 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts KUNA HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 KUNA JOINT DISTRICT NO. 3 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts KUNA HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of KUNA HIGH SCHOOL in the District is -10.3% percentage points.
11. If KUNA HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 66 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s KUNA HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.3% or more percentage points. For example, KUNA HIGH SCHOOL reports a 2010 -10.3% percentage point gap between the percentage of girls enrolled (624) compared to boys enrolled (627) and the percentage of athletes who are girls (252) compared to boys (385). If KUNA HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 66 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its KUNA HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
KUNA HIGH SCHOOL	N/A	-15.3%	-10.3%

14. For these reasons, KUNA HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰⁶

15. At KUNA HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -10.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s KUNA HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s KUNA HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹⁰⁶ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that KUNA HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁰⁷

18. By not providing equal opportunities for its female KUNA HIGH SCHOOL students, the KUNA JOINT DISTRICT NO. 3 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁰⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹⁰⁸

25. 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.

26. The KUNA JOINT DISTRICT NO. 3 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female KUNA HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate KUNA HIGH SCHOOL in the KUNA JOINT DISTRICT NO. 3 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 Seattle 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).

¹⁰⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MERIDIAN JOINT SCHOOL DISTRICT #2
1303 E CENTRAL DR
MERIDIAN, IDAHO 83642

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MERIDIAN JOINT SCHOOL DISTRICT #2 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MOUNTAIN VIEW HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MERIDIAN JOINT SCHOOL DISTRICT #2 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MOUNTAIN VIEW HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MOUNTAIN VIEW HIGH SCHOOL in the District is -10.3% percentage points.
11. If MOUNTAIN VIEW HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 86 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MOUNTAIN VIEW HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.3% or more percentage points. For example, MOUNTAIN VIEW HIGH SCHOOL reports a 2010 -10.3% percentage point gap between the percentage of girls enrolled (1023) compared to boys enrolled (1048) and the percentage of athletes who are girls (326) compared to boys (508). If MOUNTAIN VIEW HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 86 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MOUNTAIN VIEW HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MOUNTAIN VIEW HIGH SCHOOL	-6.5%	-11.3%	-10.3%

14. For these reasons, MOUNTAIN VIEW HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰⁹

15. At MOUNTAIN VIEW HIGH SCHOOL, the participation gap has increased or continued from -6.5% percentage points in 2004 to -10.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MOUNTAIN VIEW HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MOUNTAIN VIEW HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹⁰⁹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that MOUNTAIN VIEW HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹⁰

18. By not providing equal opportunities for its female MOUNTAIN VIEW HIGH SCHOOL students, the MERIDIAN JOINT SCHOOL DISTRICT #2 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹¹⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹¹¹

25. 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.

26. The MERIDIAN JOINT SCHOOL DISTRICT #2 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MOUNTAIN VIEW HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MOUNTAIN VIEW HIGH SCHOOL in the MERIDIAN JOINT SCHOOL DISTRICT #2 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹¹¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

KAMIAH JOINT SCHOOL DISTRICT #304
RT 1 BOX 720
KAMIAH, IDAHO 83536

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 KAMIAH JOINT SCHOOL DISTRICT #304 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts KAMIAH HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 KAMIAH JOINT SCHOOL DISTRICT #304 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts KAMIAH HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of KAMIAH HIGH SCHOOL in the District is - 10.3% percentage points.
11. If KAMIAH HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 21 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s KAMIAH HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.3% or more percentage points. For example, KAMIAH HIGH SCHOOL reports a 2010 -10.3% percentage point gap between the percentage of girls enrolled (85) compared to boys enrolled (78) and the percentage of athletes who are girls (85) compared to boys (118). If KAMIAH HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 21 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its KAMIAH HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
KAMIAH HIGH SCHOOL	N/A	N/A	-10.3%

14. For these reasons, KAMIAH HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹¹²

15. At KAMIAH HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -10.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s KAMIAH HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s KAMIAH HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹¹² *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that KAMIAH HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹³

18. By not providing equal opportunities for its female KAMIAH HIGH SCHOOL students, the KAMIAH JOINT SCHOOL DISTRICT #304 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹¹³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹¹⁴

25. 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.

26. The KAMIAH JOINT SCHOOL DISTRICT #304 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female KAMIAH HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate KAMIAH HIGH SCHOOL in the KAMIAH JOINT SCHOOL DISTRICT #304 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹¹⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MERIDIAN JOINT SCHOOL DISTRICT #2
1303 E CENTRAL DR
MERIDIAN, IDAHO 83642

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MERIDIAN JOINT SCHOOL DISTRICT #2 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CENTENNIAL HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MERIDIAN JOINT SCHOOL DISTRICT #2 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CENTENNIAL HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CENTENNIAL HIGH SCHOOL in the District is -10.2% percentage points.

11. If CENTENNIAL HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 87 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's CENTENNIAL HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.2% or more percentage points. For example, CENTENNIAL HIGH SCHOOL reports a 2010 -10.2% percentage point gap between the percentage of girls enrolled (836) compared to boys enrolled (872) and the percentage of athletes who are girls (329) compared to boys (520). If CENTENNIAL HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 87 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CENTENNIAL HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CENTENNIAL HIGH SCHOOL	-7.9%	-11.7%	-10.2%

14. For these reasons, CENTENNIAL HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹¹⁵

15. At CENTENNIAL HIGH SCHOOL, the participation gap has increased or continued from -7.9% percentage points in 2004 to -10.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's CENTENNIAL HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹¹⁵ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's CENTENNIAL HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that CENTENNIAL HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹⁶

18. By not providing equal opportunities for its female CENTENNIAL HIGH SCHOOL students, the MERIDIAN JOINT SCHOOL DISTRICT #2 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹¹⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹¹⁷

25. 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.

26. The MERIDIAN JOINT SCHOOL DISTRICT #2 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CENTENNIAL HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CENTENNIAL HIGH SCHOOL in the MERIDIAN JOINT SCHOOL DISTRICT #2 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹¹⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

SHELLEY SCHOOL DISTRICT #60
545 SEMINARY AVE
SHELLEY, IDAHO 83274

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 SHELLEY SCHOOL DISTRICT #60 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SHELLEY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 SHELLEY SCHOOL DISTRICT #60 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SHELLEY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SHELLEY HIGH SCHOOL in the District is - 17.2% percentage points.
11. If SHELLEY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 68 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's SHELLEY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -17.2% or more percentage points. For example, SHELLEY HIGH SCHOOL reports a 2010 -17.2% percentage point gap between the percentage of girls enrolled (334) compared to boys enrolled (331) and the percentage of athletes who are girls (131) compared to boys (266). If SHELLEY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 68 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SHELLEY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SHELLEY HIGH SCHOOL	N/A	N/A	-17.2%

14. For these reasons, SHELLEY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰

15. At SHELLEY HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -17.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's SHELLEY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's SHELLEY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹⁰ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that SHELLEY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹

18. By not providing equal opportunities for its female SHELLEY HIGH SCHOOL students, the SHELLEY SCHOOL DISTRICT #60 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹²

25. 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.

26. The SHELLEY SCHOOL DISTRICT #60 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SHELLEY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SHELLEY HIGH SCHOOL in the SHELLEY SCHOOL DISTRICT #60 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 Seattle 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).

¹² As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

VALLIVUE
5207 S MONTANA
CALDWELL, IDAHO 83607

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 VALLIVUE (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts VALLIVUE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 VALLIVUE receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts VALLIVUE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of VALLIVUE HIGH SCHOOL in the District is - 10.2% percentage points.
11. If VALLIVUE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 68 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s VALLIVUE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.2% or more percentage points. For example, VALLIVUE HIGH SCHOOL reports a 2010 -10.2% percentage point gap between the percentage of girls enrolled (781) compared to boys enrolled (770) and the percentage of athletes who are girls (270) compared to boys (402). If VALLIVUE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 68 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its VALLIVUE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
VALLIVUE HIGH SCHOOL	-4.0%	-9.6%	-10.2%

14. For these reasons, VALLIVUE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹¹⁸

15. At VALLIVUE HIGH SCHOOL, the participation gap has increased or continued from -4.0% percentage points in 2004 to -10.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s VALLIVUE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s VALLIVUE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹¹⁸ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that VALLIVUE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹⁹

18. By not providing equal opportunities for its female VALLIVUE HIGH SCHOOL students, the VALLIVUE 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹¹⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹²⁰

25. 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.

26. The VALLIVUE data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female VALLIVUE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

- a. The Seattle OCR investigate VALLIVUE HIGH SCHOOL in the VALLIVUE 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 Seattle 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).

¹²⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

LAKELAND JOINT SCHOOL DISTRICT
P.O. BOX 39
RATHDRUM, IDAHO 83858

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 LAKELAND JOINT SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts LAKELAND SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 LAKELAND JOINT SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts LAKELAND SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of LAKELAND SENIOR HIGH SCHOOL in the District is -10.2% percentage points.

11. If LAKELAND SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 59 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's LAKELAND SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.2% or more percentage points. For example, LAKELAND SENIOR HIGH SCHOOL reports a 2010 -10.2% percentage point gap between the percentage of girls enrolled (422) compared to boys enrolled (414) and the percentage of athletes who are girls (233) compared to boys (345). If LAKELAND SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 59 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its LAKELAND SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
LAKELAND SENIOR HIGH SCHOOL	-4.5%	-6.8%	-10.2%

14. For these reasons, LAKELAND SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹²¹

15. At LAKELAND SENIOR HIGH SCHOOL, the participation gap has increased or continued from -4.5% percentage points in 2004 to -10.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's LAKELAND SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹²¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's LAKELAND SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that LAKELAND SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹²²

18. By not providing equal opportunities for its female LAKELAND SENIOR HIGH SCHOOL students, the LAKELAND JOINT SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹²² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹²³

25. 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.

26. The LAKELAND JOINT SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female LAKELAND SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate LAKELAND SENIOR HIGH SCHOOL in the LAKELAND JOINT SCHOOL DISTRICT to determine whether they are

¹²³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MIDDLETON SCHOOL DISTRICT #134
5 S 3RD AVE W
MIDDLETON, IDAHO 83644

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MIDDLETON SCHOOL DISTRICT #134 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MIDDLETON HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MIDDLETON SCHOOL DISTRICT #134 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MIDDLETON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MIDDLETON HIGH SCHOOL in the District is -10.1% percentage points.
11. If MIDDLETON HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 54 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MIDDLETON HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.1% or more percentage points. For example, MIDDLETON HIGH SCHOOL reports a 2010 -10.1% percentage point gap between the percentage of girls enrolled (443) compared to boys enrolled (475) and the percentage of athletes who are girls (205) compared to boys (332). If MIDDLETON HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 54 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MIDDLETON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MIDDLETON HIGH SCHOOL	N/A	N/A	-10.1%

14. For these reasons, MIDDLETON HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹²⁴

15. At MIDDLETON HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -10.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MIDDLETON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MIDDLETON HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹²⁴ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that MIDDLETON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹²⁵

18. By not providing equal opportunities for its female MIDDLETON HIGH SCHOOL students, the MIDDLETON SCHOOL DISTRICT #134 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹²⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹²⁶

25. 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.

26. The MIDDLETON SCHOOL DISTRICT #134 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MIDDLETON HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MIDDLETON HIGH SCHOOL in the MIDDLETON SCHOOL DISTRICT #134 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹²⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

POST FALLS SCHOOL DISTRICT
P.O. BOX 40
POST FALLS, IDAHO 83877

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 POST FALLS SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts POST FALLS HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 POST FALLS SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts POST FALLS HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of POST FALLS HIGH SCHOOL in the District is - 10.0% percentage points.
11. If POST FALLS HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 61 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's POST FALLS HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.0% or more percentage points. For example, POST FALLS HIGH SCHOOL reports a 2010 -10.0% percentage point gap between the percentage of girls enrolled (696) compared to boys enrolled (800) and the percentage of athletes who are girls (220) compared to boys (383). If POST FALLS HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 61 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its POST FALLS HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
POST FALLS HIGH SCHOOL	-8.2%	-9.6%	-10.0%

14. For these reasons, POST FALLS HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹²⁷

15. At POST FALLS HIGH SCHOOL, the participation gap has increased or continued from -8.2% percentage points in 2004 to -10.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's POST FALLS HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's POST FALLS HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹²⁷ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that POST FALLS HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹²⁸

18. By not providing equal opportunities for its female POST FALLS HIGH SCHOOL students, the POST FALLS SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹²⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹²⁹

25. 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.

26. The POST FALLS SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female POST FALLS HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate POST FALLS HIGH SCHOOL in the POST FALLS SCHOOL DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹²⁹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

FILER SCHOOL DISTRICT
700 B STEVENS AVE
FILER, IDAHO 83328

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 FILER SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts FILER HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 FILER SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts FILER HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of FILER HIGH SCHOOL in the District is -10.0% percentage points.
11. If FILER HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 33 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's FILER HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.0% or more percentage points. For example, FILER HIGH SCHOOL reports a 2010 -10.0% percentage point gap between the percentage of girls enrolled (217) compared to boys enrolled (207) and the percentage of athletes who are girls (137) compared to boys (196). If FILER HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 33 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its FILER HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
FILER HIGH SCHOOL	-3.9%	-10.2%	-10.0%

14. For these reasons, FILER HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³⁰

15. At FILER HIGH SCHOOL, the participation gap has increased or continued from - 3.9% percentage points in 2004 to -10.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's FILER HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's FILER HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹³⁰ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that FILER HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹³¹

18. By not providing equal opportunities for its female FILER HIGH SCHOOL students, the FILER SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹³¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹³²

25. 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.

26. The FILER SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female FILER HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate FILER HIGH SCHOOL in the FILER SCHOOL 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 Seattle 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).

¹³² As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

WALLACE SCHOOL DISTRICT #393
405 7TH ST
WALLACE, IDAHO 83873

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 WALLACE SCHOOL DISTRICT #393 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts WALLACE JR/SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 WALLACE SCHOOL DISTRICT #393 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts WALLACE JR/SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WALLACE JR/SR HIGH SCHOOL in the District is -10.0% percentage points.
11. If WALLACE JR/SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 17 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's WALLACE JR/SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.0% or more percentage points. For example, WALLACE JR/SR HIGH SCHOOL reports a 2010 -10.0% percentage point gap between the percentage of girls enrolled (98) compared to boys enrolled (125) and the percentage of athletes who are girls (57) compared to boys (111). If WALLACE JR/SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 17 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its WALLACE JR/SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
WALLACE JR/SR HIGH SCHOOL	-1.4%	N/A	-10.0%

14. For these reasons, WALLACE JR/SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³³

15. At WALLACE JR/SR HIGH SCHOOL, the participation gap has increased or continued from -1.4% percentage points in 2004 to -10.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's WALLACE JR/SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's WALLACE JR/SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹³³ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that WALLACE JR/SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹³⁴

18. By not providing equal opportunities for its female WALLACE JR/SR HIGH SCHOOL students, the WALLACE SCHOOL DISTRICT #393 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹³⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹³⁵

25. 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.

26. The WALLACE SCHOOL DISTRICT #393 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WALLACE JR/SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate WALLACE JR/SR HIGH SCHOOL in the WALLACE SCHOOL DISTRICT #393 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹³⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BOUNDARY COUNTY DISTRICT
6577 MAIN ST, SUITE 101
BONNERS FERRY, IDAHO 83805

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BOUNDARY COUNTY DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BONNERS FERRY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BOUNDARY COUNTY DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BONNERS FERRY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BONNERS FERRY HIGH SCHOOL in the District is -10.0% percentage points.

11. If BONNERS FERRY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 35 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's BONNERS FERRY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -10.0% or more percentage points. For example, BONNERS FERRY HIGH SCHOOL reports a 2010 -10.0% percentage point gap between the percentage of girls enrolled (247) compared to boys enrolled (269) and the percentage of athletes who are girls (133) compared to boys (218). If BONNERS FERRY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 35 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BONNERS FERRY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BONNERS FERRY HIGH SCHOOL	N/A	-4.0%	-10.0%

14. For these reasons, BONNERS FERRY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³⁶

15. At BONNERS FERRY HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -10.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's BONNERS FERRY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹³⁶ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's BONNERS FERRY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that BONNERS FERRY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹³⁷

18. By not providing equal opportunities for its female BONNERS FERRY HIGH SCHOOL students, the BOUNDARY COUNTY DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹³⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹³⁸

25. 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.

26. The BOUNDARY COUNTY DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BONNERS FERRY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BONNERS FERRY HIGH SCHOOL in the BOUNDARY COUNTY DISTRICT to determine whether they are providing

¹³⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

JEROME JOINT DISTRICT
104 W 3RD
JEROME, IDAHO 83338

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 JEROME JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts JEROME HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 JEROME JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts JEROME HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of JEROME HIGH SCHOOL in the District is - 9.9% percentage points.
11. If JEROME HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 61 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s JEROME HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.9% or more percentage points. For example, JEROME HIGH SCHOOL reports a 2010 -9.9% percentage point gap between the percentage of girls enrolled (452) compared to boys enrolled (492) and the percentage of athletes who are girls (235) compared to boys (384). If JEROME HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 61 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its JEROME HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
JEROME HIGH SCHOOL	-7.7%	-8.9%	-9.9%

14. For these reasons, JEROME HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³⁹

15. At JEROME HIGH SCHOOL, the participation gap has increased or continued from -7.7% percentage points in 2004 to -9.9% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s JEROME HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s JEROME HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹³⁹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that JEROME HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴⁰

18. By not providing equal opportunities for its female JEROME HIGH SCHOOL students, the JEROME JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁴⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹⁴¹

25. 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.

26. The JEROME JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female JEROME HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate JEROME HIGH SCHOOL in the JEROME JOINT 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 Seattle 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).

¹⁴¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

CHALLIS JOINT SCHOOL DISTRICT #181
P.O. BOX 304
CHALLIS, IDAHO 83226

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 CHALLIS JOINT SCHOOL DISTRICT #181 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CHALLIS SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 CHALLIS JOINT SCHOOL DISTRICT #181 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CHALLIS SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CHALLIS SENIOR HIGH SCHOOL in the District is -9.8% percentage points.

11. If CHALLIS SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 14 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's CHALLIS SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.8% or more percentage points. For example, CHALLIS SENIOR HIGH SCHOOL reports a 2010 -9.8% percentage point gap between the percentage of girls enrolled (93) compared to boys enrolled (98) and the percentage of athletes who are girls (56) compared to boys (88). If CHALLIS SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 14 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CHALLIS SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CHALLIS SENIOR HIGH SCHOOL	3.3%	N/A	-9.8%

14. For these reasons, CHALLIS SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁴²

15. At CHALLIS SENIOR HIGH SCHOOL, the participation gap has increased or continued from 3.3% percentage points in 2004 to -9.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's CHALLIS SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁴² "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's CHALLIS SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that CHALLIS SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴³

18. By not providing equal opportunities for its female CHALLIS SENIOR HIGH SCHOOL students, the CHALLIS JOINT SCHOOL DISTRICT #181 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁴³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁴⁴

25. 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.

26. The CHALLIS JOINT SCHOOL DISTRICT #181 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CHALLIS SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CHALLIS SENIOR HIGH SCHOOL in the CHALLIS JOINT SCHOOL DISTRICT #181 to determine whether they are

¹⁴⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

SUGAR-SALEM JOINT DISTRICT
P.O. BOX 150
SUGAR CITY, IDAHO 83448

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 SUGAR-SALEM JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SUGAR-SALEM HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 SUGAR-SALEM JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SUGAR-SALEM HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SUGAR-SALEM HIGH SCHOOL in the District is -9.8% percentage points.

11. If SUGAR-SALEM HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 36 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's SUGAR-SALEM HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.8% or more percentage points. For example, SUGAR-SALEM HIGH SCHOOL reports a 2010 -9.8% percentage point gap between the percentage of girls enrolled (181) compared to boys enrolled (215) and the percentage of athletes who are girls (134) compared to boys (239). If SUGAR-SALEM HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 36 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SUGAR-SALEM HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SUGAR-SALEM HIGH SCHOOL	N/A	1.0%	-9.8%

14. For these reasons, SUGAR-SALEM HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁴⁵

15. At SUGAR-SALEM HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -9.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's SUGAR-SALEM HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁴⁵ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's SUGAR-SALEM HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that SUGAR-SALEM HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴⁶

18. By not providing equal opportunities for its female SUGAR-SALEM HIGH SCHOOL students, the SUGAR-SALEM JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁴⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁴⁷

25. 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.

26. The SUGAR-SALEM JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SUGAR-SALEM HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SUGAR-SALEM HIGH SCHOOL in the SUGAR-SALEM JOINT DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹⁴⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MINIDOKA COUNTY JOINT DISTRICT
633 FREMONT
RUPERT, IDAHO 83350

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MINIDOKA COUNTY JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MINICO SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MINIDOKA COUNTY JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MINICO SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MINICO SENIOR HIGH SCHOOL in the District is -17.0% percentage points.

11. If MINICO SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 89 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's MINICO SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -17.0% or more percentage points. For example, MINICO SENIOR HIGH SCHOOL reports a 2010 -17.0% percentage point gap between the percentage of girls enrolled (513) compared to boys enrolled (557) and the percentage of athletes who are girls (162) compared to boys (361). If MINICO SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 89 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MINICO SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MINICO SENIOR HIGH SCHOOL	N/A	-9.8%	-17.0%

14. For these reasons, MINICO SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³

15. At MINICO SENIOR HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -17.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's MINICO SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹³ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's MINICO SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that MINICO SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴

18. By not providing equal opportunities for its female MINICO SENIOR HIGH SCHOOL students, the MINIDOKA COUNTY JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁵

25. 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.

26. The MINIDOKA COUNTY JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MINICO SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MINICO SENIOR HIGH SCHOOL in the MINIDOKA COUNTY JOINT DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

NAMPA SCHOOL DISTRICT
619 S CANYON
NAMPA, IDAHO 83686

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 NAMPA SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts NAMPA SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 NAMPA SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts NAMPA SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of NAMPA SENIOR HIGH SCHOOL in the District is -9.8% percentage points.
11. If NAMPA SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 64 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s NAMPA SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.8% or more percentage points. For example, NAMPA SENIOR HIGH SCHOOL reports a 2010 -9.8% percentage point gap between the percentage of girls enrolled (591) compared to boys enrolled (711) and the percentage of athletes who are girls (233) compared to boys (421). If NAMPA SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 64 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its NAMPA SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
NAMPA SENIOR HIGH SCHOOL	-1.9%	-5.6%	-9.8%

14. For these reasons, NAMPA SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁴⁸

15. At NAMPA SENIOR HIGH SCHOOL, the participation gap has increased or continued from -1.9% percentage points in 2004 to -9.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s NAMPA SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s NAMPA SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹⁴⁸ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that NAMPA SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴⁹

18. By not providing equal opportunities for its female NAMPA SENIOR HIGH SCHOOL students, the NAMPA SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁴⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹⁵⁰

25. 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.

26. The NAMPA SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female NAMPA SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate NAMPA SENIOR HIGH SCHOOL in the NAMPA SCHOOL DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹⁵⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

POCATELLO SCHOOL DISTRICT NO.25
3115 POLELINE RD
POCATELLO, IDAHO 83201

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 POCATELLO SCHOOL DISTRICT NO.25 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts HIGHLAND SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 POCATELLO SCHOOL DISTRICT NO.25 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts HIGHLAND SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of HIGHLAND SENIOR HIGH SCHOOL in the District is -16.6% percentage points.

11. If HIGHLAND SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 104 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's HIGHLAND SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -16.6% or more percentage points. For example, HIGHLAND SENIOR HIGH SCHOOL reports a 2010 -16.6% percentage point gap between the percentage of girls enrolled (656) compared to boys enrolled (653) and the percentage of athletes who are girls (209) compared to boys (415). If HIGHLAND SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 104 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its HIGHLAND SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
HIGHLAND SENIOR HIGH SCHOOL	-9.2%	-14.2%	-16.6%

14. For these reasons, HIGHLAND SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁶

15. At HIGHLAND SENIOR HIGH SCHOOL, the participation gap has increased or continued from -9.2% percentage points in 2004 to -16.6% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's HIGHLAND SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁶ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's HIGHLAND SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that HIGHLAND SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁷

18. By not providing equal opportunities for its female HIGHLAND SENIOR HIGH SCHOOL students, the POCATELLO SCHOOL DISTRICT NO.25 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁸

25. 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.

26. The POCATELLO SCHOOL DISTRICT NO.25 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female HIGHLAND SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate HIGHLAND SENIOR HIGH SCHOOL in the POCATELLO SCHOOL DISTRICT NO.25 to determine whether they are

¹⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

WENDELL DISTRICT
P.O. BOX 300
WENDELL, IDAHO 83355

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 WENDELL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts WENDELL HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 WENDELL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts WENDELL HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WENDELL HIGH SCHOOL in the District is - 16.4% percentage points.
11. If WENDELL HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 34 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s WENDELL HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -16.4% or more percentage points. For example, WENDELL HIGH SCHOOL reports a 2010 -16.4% percentage point gap between the percentage of girls enrolled (151) compared to boys enrolled (165) and the percentage of athletes who are girls (65) compared to boys (142). If WENDELL HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 34 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its WENDELL HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
WENDELL HIGH SCHOOL	N/A	-4.8%	-16.4%

14. For these reasons, WENDELL HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁹

15. At WENDELL HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -16.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s WENDELL HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s WENDELL HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹⁹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that WENDELL HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²⁰

18. By not providing equal opportunities for its female WENDELL HIGH SCHOOL students, the WENDELL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

²⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).²¹

25. 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.

26. The WENDELL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WENDELL HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate WENDELL HIGH SCHOOL in the WENDELL 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 Seattle 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).

²¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

GRANGEVILLE JOINT DISTRICT 241
714 JEFFERSON ST
GRANGEVILLE, IDAHO 83530

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 GRANGEVILLE JOINT DISTRICT 241 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CLEARWATER VALLEY MIDDLE-SR, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 GRANGEVILLE JOINT DISTRICT 241 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CLEARWATER VALLEY MIDDLE-SR does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CLEARWATER VALLEY MIDDLE-SR in the District is -15.7% percentage points.

11. If CLEARWATER VALLEY MIDDLE-SR in the District provided girls with opportunities substantially proportionate to enrollment, an additional 20 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's CLEARWATER VALLEY MIDDLE-SR that reported athletes in 2010 have a participation gaps of -15.7% or more percentage points. For example, CLEARWATER VALLEY MIDDLE-SR reports a 2010 -15.7% percentage point gap between the percentage of girls enrolled (84) compared to boys enrolled (91) and the percentage of athletes who are girls (40) compared to boys (84). If CLEARWATER VALLEY MIDDLE-SR provided girls with proportional athletic opportunities, an additional 20 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CLEARWATER VALLEY MIDDLE-SR since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CLEARWATER VALLEY MIDDLE-SR	N/A	7.1%	-15.7%

14. For these reasons, CLEARWATER VALLEY MIDDLE-SR cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.²²

15. At CLEARWATER VALLEY MIDDLE-SR, the participation gap has increased or continued from N/A percentage points in 2004 to -15.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's CLEARWATER VALLEY MIDDLE-SR indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

²² "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's CLEARWATER VALLEY MIDDLE-SR (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that CLEARWATER VALLEY MIDDLE-SR girls in the District are any less interested in these sports than other girls in the state competitive regions.²³

18. By not providing equal opportunities for its female CLEARWATER VALLEY MIDDLE-SR students, the GRANGEVILLE JOINT DISTRICT 241 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

²³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).²⁴

25. 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.

26. The GRANGEVILLE JOINT DISTRICT 241 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CLEARWATER VALLEY MIDDLE-SR students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CLEARWATER VALLEY MIDDLE-SR in the GRANGEVILLE JOINT DISTRICT 241 to determine whether they are providing

²⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

IDAHO FALLS SCHOOL DISTRICT #91
690 JOHN ADAMS PKWY
IDAHO FALLS, IDAHO 83401

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 IDAHO FALLS SCHOOL DISTRICT #91 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts IDAHO FALLS HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 IDAHO FALLS SCHOOL DISTRICT #91 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts IDAHO FALLS HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of IDAHO FALLS HIGH SCHOOL in the District is -14.9% percentage points.

11. If IDAHO FALLS HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 85 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's IDAHO FALLS HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -14.9% or more percentage points. For example, IDAHO FALLS HIGH SCHOOL reports a 2010 -14.9% percentage point gap between the percentage of girls enrolled (579) compared to boys enrolled (612) and the percentage of athletes who are girls (193) compared to boys (379). If IDAHO FALLS HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 85 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its IDAHO FALLS HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
IDAHO FALLS HIGH SCHOOL	N/A	N/A	-14.9%

14. For these reasons, IDAHO FALLS HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.²⁵

15. At IDAHO FALLS HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -14.9% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's IDAHO FALLS HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

²⁵ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's IDAHO FALLS HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that IDAHO FALLS HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²⁶

18. By not providing equal opportunities for its female IDAHO FALLS HIGH SCHOOL students, the IDAHO FALLS SCHOOL DISTRICT #91 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

²⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).²⁷

25. 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.

26. The IDAHO FALLS SCHOOL DISTRICT #91 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female IDAHO FALLS HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate IDAHO FALLS HIGH SCHOOL in the IDAHO FALLS SCHOOL DISTRICT #91 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

²⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

VALLEY SCHOOL DISTRICT
882 VALLEY RD S
HAZELTON, IDAHO 83335

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 VALLEY SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts VALLEY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 VALLEY SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts VALLEY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of VALLEY HIGH SCHOOL in the District is - 9.7% percentage points.
11. If VALLEY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 16 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s VALLEY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.7% or more percentage points. For example, VALLEY HIGH SCHOOL reports a 2010 -9.7% percentage point gap between the percentage of girls enrolled (311) compared to boys enrolled (329) and the percentage of athletes who are girls (63) compared to boys (99). If VALLEY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 16 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its VALLEY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
VALLEY HIGH SCHOOL	-9.0%	N/A	-9.7%

14. For these reasons, VALLEY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹

15. At VALLEY HIGH SCHOOL, the participation gap has increased or continued from -9.0% percentage points in 2004 to -9.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s VALLEY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s VALLEY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that VALLEY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²

18. By not providing equal opportunities for its female VALLEY HIGH SCHOOL students, the VALLEY SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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 *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).³

25. 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.

26. The VALLEY SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female VALLEY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate VALLEY HIGH SCHOOL in the VALLEY SCHOOL 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 Seattle 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).

³ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

FREMONT COUNTY JOINT SCHOOL DISTRICT 215
147 N 2ND W ST
ST ANTHONY, IDAHO 83445

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 FREMONT COUNTY JOINT SCHOOL DISTRICT 215 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts NORTH FREMONT JR-SR HIGH SCH, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 FREMONT COUNTY JOINT SCHOOL DISTRICT 215 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts NORTH FREMONT JR-SR HIGH SCH does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of NORTH FREMONT JR-SR HIGH SCH in the District is -8.5% percentage points.

11. If NORTH FREMONT JR-SR HIGH SCH in the District provided girls with opportunities substantially proportionate to enrollment, an additional 16 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's NORTH FREMONT JR-SR HIGH SCH that reported athletes in 2010 have a participation gaps of -8.5% or more percentage points. For example, NORTH FREMONT JR-SR HIGH SCH reports a 2010 -8.5% percentage point gap between the percentage of girls enrolled (130) compared to boys enrolled (169) and the percentage of athletes who are girls (65) compared to boys (121). If NORTH FREMONT JR-SR HIGH SCH provided girls with proportional athletic opportunities, an additional 16 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its NORTH FREMONT JR-SR HIGH SCH since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
NORTH FREMONT JR-SR HIGH SCH	3.8%	N/A	-8.5%

14. For these reasons, NORTH FREMONT JR-SR HIGH SCH cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.²⁸

15. At NORTH FREMONT JR-SR HIGH SCH, the participation gap has increased or continued from 3.8% percentage points in 2004 to -8.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's NORTH FREMONT JR-SR HIGH SCH indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

²⁸ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's NORTH FREMONT JR-SR HIGH SCH (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that NORTH FREMONT JR-SR HIGH SCH girls in the District are any less interested in these sports than other girls in the state competitive regions.²⁹

18. By not providing equal opportunities for its female NORTH FREMONT JR-SR HIGH SCH students, the FREMONT COUNTY JOINT SCHOOL DISTRICT 215 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

²⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).³⁰

25. 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.

26. The FREMONT COUNTY JOINT SCHOOL DISTRICT 215 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female NORTH FREMONT JR-SR HIGH SCH students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate NORTH FREMONT JR-SR HIGH SCH in the FREMONT COUNTY JOINT SCHOOL DISTRICT 215 to determine whether

³⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

they are providing their female students with equal opportunities to play sports.
34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

CASSIA COUNTY JOINT DISTRICT
237 E 19TH
BURLEY, IDAHO 83318

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 CASSIA COUNTY JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts DECLO SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 CASSIA COUNTY JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts DECLO SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of DECLO SENIOR HIGH SCHOOL in the District is -8.4% percentage points.

11. If DECLO SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 26 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's DECLO SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.4% or more percentage points. For example, DECLO SENIOR HIGH SCHOOL reports a 2010 -8.4% percentage point gap between the percentage of girls enrolled (146) compared to boys enrolled (152) and the percentage of athletes who are girls (127) compared to boys (186). If DECLO SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 26 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its DECLO SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
DECLO SENIOR HIGH SCHOOL	-3.6%	N/A	-8.4%

14. For these reasons, DECLO SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.³¹

15. At DECLO SENIOR HIGH SCHOOL, the participation gap has increased or continued from -3.6% percentage points in 2004 to -8.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's DECLO SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

³¹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's DECLO SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that DECLO SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.³²

18. By not providing equal opportunities for its female DECLO SENIOR HIGH SCHOOL students, the CASSIA COUNTY JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

³² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).³³

25. 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.

26. The CASSIA COUNTY JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female DECLO SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate DECLO SENIOR HIGH SCHOOL in the CASSIA COUNTY JOINT DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

³³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

CASCADE DISTRICT
P.O. BOX 291
CASCADE, IDAHO 83611

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 CASCADE DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CASCADE JR-SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 CASCADE DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CASCADE JR-SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CASCADE JR-SR HIGH SCHOOL in the District is -8.4% percentage points.
11. If CASCADE JR-SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 10 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s CASCADE JR-SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.4% or more percentage points. For example, CASCADE JR-SR HIGH SCHOOL reports a 2010 -8.4% percentage point gap between the percentage of girls enrolled (60) compared to boys enrolled (78) and the percentage of athletes who are girls (40) compared to boys (74). If CASCADE JR-SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 10 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CASCADE JR-SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CASCADE JR-SR HIGH SCHOOL	N/A	1.9%	-8.4%

14. For these reasons, CASCADE JR-SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.³⁴

15. At CASCADE JR-SR HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -8.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s CASCADE JR-SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s CASCADE JR-SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

³⁴ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that CASCADE JR-SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.³⁵

18. By not providing equal opportunities for its female CASCADE JR-SR HIGH SCHOOL students, the CASCADE DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

³⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).³⁶

25. 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.

26. The CASCADE DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CASCADE JR-SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CASCADE JR-SR HIGH SCHOOL in the CASCADE 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 Seattle 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).

³⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

COEUR D ALENE DISTRICT
4904 N DUNCAN DR
COEUR D'ALENE, IDAHO 83815

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 COEUR D ALENE DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts LAKE CITY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 COEUR D ALENE DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts LAKE CITY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of LAKE CITY HIGH SCHOOL in the District is - 8.2% percentage points.
11. If LAKE CITY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 52 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s LAKE CITY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.2% or more percentage points. For example, LAKE CITY HIGH SCHOOL reports a 2010 -8.2% percentage point gap between the percentage of girls enrolled (760) compared to boys enrolled (787) and the percentage of athletes who are girls (256) compared to boys (370). If LAKE CITY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 52 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its LAKE CITY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
LAKE CITY HIGH SCHOOL	-6.1%	-11.5%	-8.2%

14. For these reasons, LAKE CITY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.³⁷

15. At LAKE CITY HIGH SCHOOL, the participation gap has increased or continued from -6.1% percentage points in 2004 to -8.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s LAKE CITY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s LAKE CITY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

³⁷ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that LAKE CITY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.³⁸

18. By not providing equal opportunities for its female LAKE CITY HIGH SCHOOL students, the COEUR D ALENE DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

³⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).³⁹

25. 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.

26. The COEUR D ALENE DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female LAKE CITY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate LAKE CITY HIGH SCHOOL in the COEUR D ALENE 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 Seattle 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).

³⁹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

GRACE JOINT SCHOOL DISTRICT NO. 148
P.O. BOX 347
GRACE, IDAHO 83241

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 GRACE JOINT SCHOOL DISTRICT NO. 148 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts GRACE JR/SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 GRACE JOINT SCHOOL DISTRICT NO. 148 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts GRACE JR/SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of GRACE JR/SR HIGH SCHOOL in the District is -8.2% percentage points.
11. If GRACE JR/SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 11 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s GRACE JR/SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.2% or more percentage points. For example, GRACE JR/SR HIGH SCHOOL reports a 2010 -8.2% percentage point gap between the percentage of girls enrolled (74) compared to boys enrolled (102) and the percentage of athletes who are girls (47) compared to boys (92). If GRACE JR/SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 11 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its GRACE JR/SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
GRACE JR/SR HIGH SCHOOL	-8.1%	N/A	-8.2%

14. For these reasons, GRACE JR/SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴⁰

15. At GRACE JR/SR HIGH SCHOOL, the participation gap has increased or continued from -8.1% percentage points in 2004 to -8.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s GRACE JR/SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s GRACE JR/SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁴⁰ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that GRACE JR/SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁴¹

18. By not providing equal opportunities for its female GRACE JR/SR HIGH SCHOOL students, the GRACE JOINT SCHOOL DISTRICT NO. 148 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁴¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁴²

25. 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.

26. The GRACE JOINT SCHOOL DISTRICT NO. 148 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female GRACE JR/SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate GRACE JR/SR HIGH SCHOOL in the GRACE JOINT SCHOOL DISTRICT NO. 148 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁴² As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MERIDIAN JOINT SCHOOL DISTRICT #2
1303 E CENTRAL DR
MERIDIAN, IDAHO 83642

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MERIDIAN JOINT SCHOOL DISTRICT #2 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts EAGLE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MERIDIAN JOINT SCHOOL DISTRICT #2 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts EAGLE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of EAGLE HIGH SCHOOL in the District is -7.8% percentage points.
11. If EAGLE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 59 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's EAGLE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.8% or more percentage points. For example, EAGLE HIGH SCHOOL reports a 2010 -7.8% percentage point gap between the percentage of girls enrolled (705) compared to boys enrolled (784) and the percentage of athletes who are girls (299) compared to boys (457). If EAGLE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 59 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its EAGLE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
EAGLE HIGH SCHOOL	-6.5%	-14.0%	-7.8%

14. For these reasons, EAGLE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴³

15. At EAGLE HIGH SCHOOL, the participation gap has increased or continued from -6.5% percentage points in 2004 to -7.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's EAGLE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's EAGLE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

⁴³ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that EAGLE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁴⁴

18. By not providing equal opportunities for its female EAGLE HIGH SCHOOL students, the MERIDIAN JOINT SCHOOL DISTRICT #2 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁴⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁴⁵

25. 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.

26. The MERIDIAN JOINT SCHOOL DISTRICT #2 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female EAGLE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate EAGLE HIGH SCHOOL in the MERIDIAN JOINT SCHOOL DISTRICT #2 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁴⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

COEUR D ALENE DISTRICT
4904 N DUNCAN DR
COEUR D'ALENE, IDAHO 83815

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 COEUR D ALENE DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts COEUR D'ALENE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 COEUR D ALENE DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts COEUR D'ALENE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of COEUR D'ALENE HIGH SCHOOL in the District is -7.8% percentage points.
11. If COEUR D'ALENE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 55 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's COEUR D'ALENE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.8% or more percentage points. For example, COEUR D'ALENE HIGH SCHOOL reports a 2010 -7.8% percentage point gap between the percentage of girls enrolled (663) compared to boys enrolled (740) and the percentage of athletes who are girls (278) compared to boys (426). If COEUR D'ALENE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 55 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its COEUR D'ALENE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
COEUR D'ALENE HIGH SCHOOL	-4.7%	4.2%	-7.8%

14. For these reasons, COEUR D'ALENE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴⁶

15. At COEUR D'ALENE HIGH SCHOOL, the participation gap has increased or continued from -4.7% percentage points in 2004 to -7.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's COEUR D'ALENE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's COEUR D'ALENE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

⁴⁶ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that COEUR D'ALENE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁴⁷

18. By not providing equal opportunities for its female COEUR D'ALENE HIGH SCHOOL students, the COEUR D ALENE DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁴⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁴⁸

25. 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.

26. The COEUR D ALENE DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female COEUR D'ALENE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate COEUR D'ALENE HIGH SCHOOL in the COEUR D ALENE DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁴⁸ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

GARDEN VALLEY SCHOOL DISTRICT
P.O. BOX 710
GARDEN VALLEY, IDAHO 83622

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 GARDEN VALLEY SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts GARDEN VALLEY JR-SR HIGH, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 GARDEN VALLEY SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts GARDEN VALLEY JR-SR HIGH does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of GARDEN VALLEY JR-SR HIGH in the District is -7.6% percentage points.
11. If GARDEN VALLEY JR-SR HIGH in the District provided girls with opportunities substantially proportionate to enrollment, an additional 9 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's GARDEN VALLEY JR-SR HIGH that reported athletes in 2010 have a participation gaps of -7.6% or more percentage points. For example, GARDEN VALLEY JR-SR HIGH reports a 2010 -7.6% percentage point gap between the percentage of girls enrolled (101) compared to boys enrolled (131) and the percentage of athletes who are girls (42) compared to boys (75). If GARDEN VALLEY JR-SR HIGH provided girls with proportional athletic opportunities, an additional 9 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its GARDEN VALLEY JR-SR HIGH since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
GARDEN VALLEY JR-SR HIGH	5.9%	N/A	-7.6%

14. For these reasons, GARDEN VALLEY JR-SR HIGH cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴⁹

15. At GARDEN VALLEY JR-SR HIGH, the participation gap has increased or continued from 5.9% percentage points in 2004 to -7.6% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's GARDEN VALLEY JR-SR HIGH indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's GARDEN VALLEY JR-SR HIGH (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there

⁴⁹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

is no reason to believe that GARDEN VALLEY JR-SR HIGH girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵⁰

18. By not providing equal opportunities for its female GARDEN VALLEY JR-SR HIGH students, the GARDEN VALLEY SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁵¹

25. 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.

26. The GARDEN VALLEY SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female GARDEN VALLEY JR-SR HIGH students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate GARDEN VALLEY JR-SR HIGH in the GARDEN VALLEY SCHOOL DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁵¹ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

NAMPA SCHOOL DISTRICT
619 S CANYON
NAMPA, IDAHO 83686

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 NAMPA SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts COLUMBIA HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 NAMPA SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts COLUMBIA HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of COLUMBIA HIGH SCHOOL in the District is - 7.5% percentage points.
11. If COLUMBIA HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 44 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s COLUMBIA HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.5% or more percentage points. For example, COLUMBIA HIGH SCHOOL reports a 2010 -7.5% percentage point gap between the percentage of girls enrolled (620) compared to boys enrolled (702) and the percentage of athletes who are girls (228) compared to boys (351). If COLUMBIA HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 44 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its COLUMBIA HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
COLUMBIA HIGH SCHOOL	N/A	N/A	-7.5%

14. For these reasons, COLUMBIA HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁵²

15. At COLUMBIA HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -7.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s COLUMBIA HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s COLUMBIA HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁵² "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that COLUMBIA HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵³

18. By not providing equal opportunities for its female COLUMBIA HIGH SCHOOL students, the NAMPA SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁵⁴

25. 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.

26. The NAMPA SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female COLUMBIA HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate COLUMBIA HIGH SCHOOL in the NAMPA SCHOOL 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 Seattle 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).

⁵⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BLAINE COUNTY DISTRICT
118 W BULLION ST
HAILEY, IDAHO 83333

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BLAINE COUNTY DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CAREY PUBLIC HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BLAINE COUNTY DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CAREY PUBLIC HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CAREY PUBLIC HIGH SCHOOL in the District is -7.5% percentage points.
11. If CAREY PUBLIC HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 10 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s CAREY PUBLIC HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.5% or more percentage points. For example, CAREY PUBLIC HIGH SCHOOL reports a 2010 -7.5% percentage point gap between the percentage of girls enrolled (118) compared to boys enrolled (145) and the percentage of athletes who are girls (49) compared to boys (82). If CAREY PUBLIC HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 10 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CAREY PUBLIC HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CAREY PUBLIC HIGH SCHOOL	N/A	1.8%	-7.5%

14. For these reasons, CAREY PUBLIC HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁵⁵

15. At CAREY PUBLIC HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -7.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s CAREY PUBLIC HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s CAREY PUBLIC HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

⁵⁵ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that CAREY PUBLIC HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵⁶

18. By not providing equal opportunities for its female CAREY PUBLIC HIGH SCHOOL students, the BLAINE COUNTY DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁵⁷

25. 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.

26. The BLAINE COUNTY DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CAREY PUBLIC HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CAREY PUBLIC HIGH SCHOOL in the BLAINE COUNTY DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁵⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

LAKE PEND OREILLE SCHOOL DISTRICT #84
901 TRIANGLE DR
PONDERAY, IDAHO 83852

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 LAKE PEND OREILLE SCHOOL DISTRICT #84 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SANDPOINT HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 LAKE PEND OREILLE SCHOOL DISTRICT #84 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SANDPOINT HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SANDPOINT HIGH SCHOOL in the District is - 9.3% percentage points.
11. If SANDPOINT HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 52 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s SANDPOINT HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.3% or more percentage points. For example, SANDPOINT HIGH SCHOOL reports a 2010 -9.3% percentage point gap between the percentage of girls enrolled (493) compared to boys enrolled (538) and the percentage of athletes who are girls (214) compared to boys (342). If SANDPOINT HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 52 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SANDPOINT HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SANDPOINT HIGH SCHOOL	-0.1%	-7.9%	-9.3%

14. For these reasons, SANDPOINT HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁴

15. At SANDPOINT HIGH SCHOOL, the participation gap has increased or continued from -0.1% percentage points in 2004 to -9.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s SANDPOINT HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s SANDPOINT HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁴ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that SANDPOINT HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵

18. By not providing equal opportunities for its female SANDPOINT HIGH SCHOOL students, the LAKE PEND OREILLE SCHOOL DISTRICT #84 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁶

25. 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.

26. The LAKE PEND OREILLE SCHOOL DISTRICT #84 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SANDPOINT HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SANDPOINT HIGH SCHOOL in the LAKE PEND OREILLE SCHOOL DISTRICT #84 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁶ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

PAYETTE JOINT DISTRICT
20 N 12TH
PAYETTE, IDAHO 83661

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 PAYETTE JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts PAYETTE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 PAYETTE JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts PAYETTE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of PAYETTE HIGH SCHOOL in the District is - 7.4% percentage points.
11. If PAYETTE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 23 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s PAYETTE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.4% or more percentage points. For example, PAYETTE HIGH SCHOOL reports a 2010 -7.4% percentage point gap between the percentage of girls enrolled (238) compared to boys enrolled (268) and the percentage of athletes who are girls (125) compared to boys (190). If PAYETTE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 23 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its PAYETTE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
PAYETTE HIGH SCHOOL	-7.0%	-7.4%	-7.4%

14. For these reasons, PAYETTE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁵⁸

15. At PAYETTE HIGH SCHOOL, the participation gap has increased or continued from -7.0% percentage points in 2004 to -7.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s PAYETTE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s PAYETTE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁵⁸ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that PAYETTE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁵⁹

18. By not providing equal opportunities for its female PAYETTE HIGH SCHOOL students, the PAYETTE JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁵⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁶⁰

25. 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.

26. The PAYETTE JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female PAYETTE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate PAYETTE HIGH SCHOOL in the PAYETTE JOINT 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 Seattle 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).

⁶⁰ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

SALMON SCHOOL DISTRICT #291
907 SHARKEY ST
SALMON, IDAHO 83467

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 SALMON SCHOOL DISTRICT #291 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SALMON HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 SALMON SCHOOL DISTRICT #291 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SALMON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SALMON HIGH SCHOOL in the District is - 7.3% percentage points.
11. If SALMON HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 17 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s SALMON HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.3% or more percentage points. For example, SALMON HIGH SCHOOL reports a 2010 -7.3% percentage point gap between the percentage of girls enrolled (136) compared to boys enrolled (165) and the percentage of athletes who are girls (88) compared to boys (144). If SALMON HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 17 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SALMON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SALMON HIGH SCHOOL	-6.9%	N/A	-7.3%

14. For these reasons, SALMON HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁶¹

15. At SALMON HIGH SCHOOL, the participation gap has increased or continued from -6.9% percentage points in 2004 to -7.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s SALMON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s SALMON HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

⁶¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that SALMON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁶²

18. By not providing equal opportunities for its female SALMON HIGH SCHOOL students, the SALMON SCHOOL DISTRICT #291 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁶² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁶³

25. 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.

26. The SALMON SCHOOL DISTRICT #291 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SALMON HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SALMON HIGH SCHOOL in the SALMON SCHOOL DISTRICT #291 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 Seattle 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).

⁶³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

SNAKE RIVER SCHOOL DISTRICT #52
103 S 900 W
BLACKFOOT, IDAHO 83221

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 SNAKE RIVER SCHOOL DISTRICT #52 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SNAKE RIVER HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 SNAKE RIVER SCHOOL DISTRICT #52 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SNAKE RIVER HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SNAKE RIVER HIGH SCHOOL in the District is -7.1% percentage points.

11. If SNAKE RIVER HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 23 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's SNAKE RIVER HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.1% or more percentage points. For example, SNAKE RIVER HIGH SCHOOL reports a 2010 -7.1% percentage point gap between the percentage of girls enrolled (267) compared to boys enrolled (283) and the percentage of athletes who are girls (135) compared to boys (191). If SNAKE RIVER HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 23 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SNAKE RIVER HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SNAKE RIVER HIGH SCHOOL	N/A	N/A	-7.1%

14. For these reasons, SNAKE RIVER HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁶⁴

15. At SNAKE RIVER HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -7.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's SNAKE RIVER HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁶⁴ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's SNAKE RIVER HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that SNAKE RIVER HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁶⁵

18. By not providing equal opportunities for its female SNAKE RIVER HIGH SCHOOL students, the SNAKE RIVER SCHOOL DISTRICT #52 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁶⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁶⁶

25. 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.

26. The SNAKE RIVER SCHOOL DISTRICT #52 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SNAKE RIVER HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SNAKE RIVER HIGH SCHOOL in the SNAKE RIVER SCHOOL DISTRICT #52 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁶⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MARSH VALLEY SCHOOL DISTRICT #21
P.O. BOX 180
ARIMO, IDAHO 83252

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MARSH VALLEY SCHOOL DISTRICT #21 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MARSH VALLEY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MARSH VALLEY SCHOOL DISTRICT #21 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MARSH VALLEY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MARSH VALLEY HIGH SCHOOL in the District is -7.0% percentage points.

11. If MARSH VALLEY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 21 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's MARSH VALLEY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -7.0% or more percentage points. For example, MARSH VALLEY HIGH SCHOOL reports a 2010 -7.0% percentage point gap between the percentage of girls enrolled (182) compared to boys enrolled (189) and the percentage of athletes who are girls (128) compared to boys (176). If MARSH VALLEY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 21 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MARSH VALLEY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MARSH VALLEY HIGH SCHOOL	-5.8%	-1.7%	-7.0%

14. For these reasons, MARSH VALLEY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁶⁷

15. At MARSH VALLEY HIGH SCHOOL, the participation gap has increased or continued from -5.8% percentage points in 2004 to -7.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's MARSH VALLEY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁶⁷ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's MARSH VALLEY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that MARSH VALLEY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁶⁸

18. By not providing equal opportunities for its female MARSH VALLEY HIGH SCHOOL students, the MARSH VALLEY SCHOOL DISTRICT #21 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁶⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁶⁹

25. 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.

26. The MARSH VALLEY SCHOOL DISTRICT #21 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MARSH VALLEY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MARSH VALLEY HIGH SCHOOL in the MARSH VALLEY SCHOOL DISTRICT #21 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁶⁹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

SHOSHONE JOINT DISTRICT #312
61 E HWY 24
SHOSHONE, IDAHO 83352

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 SHOSHONE JOINT DISTRICT #312 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SHOSHONE JR-SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 SHOSHONE JOINT DISTRICT #312 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SHOSHONE JR-SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SHOSHONE JR-SR HIGH SCHOOL in the District is -6.7% percentage points.
11. If SHOSHONE JR-SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 9 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s SHOSHONE JR-SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.7% or more percentage points. For example, SHOSHONE JR-SR HIGH SCHOOL reports a 2010 -6.7% percentage point gap between the percentage of girls enrolled (80) compared to boys enrolled (81) and the percentage of athletes who are girls (58) compared to boys (77). If SHOSHONE JR-SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 9 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SHOSHONE JR-SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SHOSHONE JR-SR HIGH SCHOOL	-1.2%	11.9%	-6.7%

14. For these reasons, SHOSHONE JR-SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷⁰

15. At SHOSHONE JR-SR HIGH SCHOOL, the participation gap has increased or continued from -1.2% percentage points in 2004 to -6.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s SHOSHONE JR-SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s SHOSHONE JR-SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

⁷⁰ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that SHOSHONE JR-SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁷¹

18. By not providing equal opportunities for its female SHOSHONE JR-SR HIGH SCHOOL students, the SHOSHONE JOINT DISTRICT #312 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁷¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁷²

25. 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.

26. The SHOSHONE JOINT DISTRICT #312 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SHOSHONE JR-SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

- a. The Seattle OCR investigate SHOSHONE JR-SR HIGH SCHOOL in the SHOSHONE JOINT DISTRICT #312 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁷² As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

KELLOGG JOINT SCHOOL DISTRICT #391
800 BUNKER AVE
KELLOGG, IDAHO 83837

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 KELLOGG JOINT SCHOOL DISTRICT #391 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts KELLOGG HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 KELLOGG JOINT SCHOOL DISTRICT #391 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts KELLOGG HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of KELLOGG HIGH SCHOOL in the District is - 6.7% percentage points.
11. If KELLOGG HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 20 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s KELLOGG HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.7% or more percentage points. For example, KELLOGG HIGH SCHOOL reports a 2010 -6.7% percentage point gap between the percentage of girls enrolled (207) compared to boys enrolled (204) and the percentage of athletes who are girls (127) compared to boys (164). If KELLOGG HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 20 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its KELLOGG HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
KELLOGG HIGH SCHOOL	N/A	N/A	-6.7%

14. For these reasons, KELLOGG HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷³

15. At KELLOGG HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -6.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s KELLOGG HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s KELLOGG HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁷³ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that KELLOGG HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁷⁴

18. By not providing equal opportunities for its female KELLOGG HIGH SCHOOL students, the KELLOGG JOINT SCHOOL DISTRICT #391 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁷⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁷⁵

25. 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.

26. The KELLOGG JOINT SCHOOL DISTRICT #391 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female KELLOGG HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate KELLOGG HIGH SCHOOL in the KELLOGG JOINT SCHOOL DISTRICT #391 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁷⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

COEUR D ALENE DISTRICT
4904 N DUNCAN DR
COEUR D'ALENE, IDAHO 83815

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 COEUR D ALENE DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts COEUR D'ALENE CHARTER ACADEMY, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 COEUR D ALENE DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts COEUR D'ALENE CHARTER ACADEMY does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of COEUR D'ALENE CHARTER ACADEMY in the District is -6.7% percentage points.
11. If COEUR D'ALENE CHARTER ACADEMY in the District provided girls with opportunities substantially proportionate to enrollment, an additional 11 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's COEUR D'ALENE CHARTER ACADEMY that reported athletes in 2010 have a participation gaps of -6.7% or more percentage points. For example, COEUR D'ALENE CHARTER ACADEMY reports a 2010 -6.7% percentage point gap between the percentage of girls enrolled (319) compared to boys enrolled (250) and the percentage of athletes who are girls (84) compared to boys (86). If COEUR D'ALENE CHARTER ACADEMY provided girls with proportional athletic opportunities, an additional 11 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its COEUR D'ALENE CHARTER ACADEMY since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
COEUR D'ALENE CHARTER ACADEMY	-10.0%	-19.3%	-6.7%

14. For these reasons, COEUR D'ALENE CHARTER ACADEMY cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷⁶

15. At COEUR D'ALENE CHARTER ACADEMY, the participation gap has increased or continued from -10.0% percentage points in 2004 to -6.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's COEUR D'ALENE CHARTER ACADEMY indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's COEUR D'ALENE CHARTER ACADEMY (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse),

⁷⁶ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

and there is no reason to believe that COEUR D'ALENE CHARTER ACADEMY girls in the District are any less interested in these sports than other girls in the state competitive regions.⁷⁷

18. By not providing equal opportunities for its female COEUR D'ALENE CHARTER ACADEMY students, the COEUR D ALENE DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁷⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁷⁸

25. 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.

26. The COEUR D ALENE DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female COEUR D'ALENE CHARTER ACADEMY students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

- a. The Seattle OCR investigate COEUR D'ALENE CHARTER ACADEMY in the COEUR D ALENE DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁷⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

LAKELAND JOINT SCHOOL DISTRICT
P.O. BOX 39
RATHDRUM, IDAHO 83858

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 LAKELAND JOINT SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts TIMBERLAKE JR/SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 LAKELAND JOINT SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts TIMBERLAKE JR/SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of TIMBERLAKE JR/SR HIGH SCHOOL in the District is -6.5% percentage points.

11. If TIMBERLAKE JR/SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 26 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's TIMBERLAKE JR/SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.5% or more percentage points. For example, TIMBERLAKE JR/SR HIGH SCHOOL reports a 2010 -6.5% percentage point gap between the percentage of girls enrolled (261) compared to boys enrolled (268) and the percentage of athletes who are girls (173) compared to boys (231). If TIMBERLAKE JR/SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 26 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its TIMBERLAKE JR/SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
TIMBERLAKE JR/SR HIGH SCHOOL	-7.9%	-10.9%	-6.5%

14. For these reasons, TIMBERLAKE JR/SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷⁹

15. At TIMBERLAKE JR/SR HIGH SCHOOL, the participation gap has increased or continued from -7.9% percentage points in 2004 to -6.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's TIMBERLAKE JR/SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

⁷⁹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's TIMBERLAKE JR/SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that TIMBERLAKE JR/SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸⁰

18. By not providing equal opportunities for its female TIMBERLAKE JR/SR HIGH SCHOOL students, the LAKELAND JOINT SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁸⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁸¹

25. 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.

26. The LAKELAND JOINT SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female TIMBERLAKE JR/SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate TIMBERLAKE JR/SR HIGH SCHOOL in the LAKELAND JOINT SCHOOL DISTRICT to determine whether they are

⁸¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs. 69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

NEW PLYMOUTH DISTRICT
207 S PLYMOUTH
NEW PLYMOUTH, IDAHO 83655

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 PLYMOUTH DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts NEW PLYMOUTH HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 PLYMOUTH DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts NEW PLYMOUTH HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of NEW PLYMOUTH HIGH SCHOOL in the District is -6.5% percentage points.
11. If NEW PLYMOUTH HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 19 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s NEW PLYMOUTH HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.5% or more percentage points. For example, NEW PLYMOUTH HIGH SCHOOL reports a 2010 -6.5% percentage point gap between the percentage of girls enrolled (141) compared to boys enrolled (151) and the percentage of athletes who are girls (123) compared to boys (171). If NEW PLYMOUTH HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 19 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its NEW PLYMOUTH HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
NEW PLYMOUTH HIGH SCHOOL	N/A	-7.7%	-6.5%

14. For these reasons, NEW PLYMOUTH HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁸²

15. At NEW PLYMOUTH HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -6.5% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s NEW PLYMOUTH HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s NEW PLYMOUTH HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

⁸² *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that NEW PLYMOUTH HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸³

18. By not providing equal opportunities for its female NEW PLYMOUTH HIGH SCHOOL students, the NEW PLYMOUTH DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

⁸³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁸⁴

25. 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.

26. The NEW PLYMOUTH DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female NEW PLYMOUTH HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate NEW PLYMOUTH HIGH SCHOOL in the NEW PLYMOUTH DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁸⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BUHL JOINT DISTRICT
920 MAIN ST
BUHL, IDAHO 83316

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BUHL JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BUHL HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BUHL JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BUHL HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BUHL HIGH SCHOOL in the District is -6.4% percentage points.
11. If BUHL HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 23 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's BUHL HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.4% or more percentage points. For example, BUHL HIGH SCHOOL reports a 2010 -6.4% percentage point gap between the percentage of girls enrolled (206) compared to boys enrolled (211) and the percentage of athletes who are girls (156) compared to boys (207). If BUHL HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 23 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BUHL HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BUHL HIGH SCHOOL	-4.7%	N/A	-6.4%

14. For these reasons, BUHL HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁸⁵

15. At BUHL HIGH SCHOOL, the participation gap has increased or continued from -4.7% percentage points in 2004 to -6.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's BUHL HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's BUHL HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that BUHL HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸⁶

⁸⁵ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

⁸⁶ Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of

18. By not providing equal opportunities for its female BUHL HIGH SCHOOL students, the BUHL JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.

(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.

24. 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).⁸⁷

25. 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.

26. The BUHL JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BUHL HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BUHL HIGH SCHOOL in the BUHL JOINT 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 Seattle 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 Seattle 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).

⁸⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

d. The Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

NAMPA SCHOOL DISTRICT
619 S CANYON
NAMPA, IDAHO 83686

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 NAMPA SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SKYVIEW HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 NAMPA SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SKYVIEW HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SKYVIEW HIGH SCHOOL in the District is - 9.3% percentage points.
11. If SKYVIEW HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 58 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s SKYVIEW HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.3% or more percentage points. For example, SKYVIEW HIGH SCHOOL reports a 2010 -9.3% percentage point gap between the percentage of girls enrolled (597) compared to boys enrolled (612) and the percentage of athletes who are girls (250) compared to boys (373). If SKYVIEW HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 58 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SKYVIEW HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SKYVIEW HIGH SCHOOL	-7.6%	-6.9%	-9.3%

14. For these reasons, SKYVIEW HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁷

15. At SKYVIEW HIGH SCHOOL, the participation gap has increased or continued from -7.6% percentage points in 2004 to -9.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s SKYVIEW HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s SKYVIEW HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁷ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that SKYVIEW HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸

18. By not providing equal opportunities for its female SKYVIEW HIGH SCHOOL students, the NAMPA SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁹

25. 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.

26. The NAMPA SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SKYVIEW HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SKYVIEW HIGH SCHOOL in the NAMPA SCHOOL 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 Seattle 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).

⁹ As the judge concluded in *Choike vs SRU*, "67. *Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong.* 68. *If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.*69. *After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.*" *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

LAPWAI DISTRICT
P.O. BOX 247
LAPWAI, IDAHO 83540

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 LAPWAI DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts LAPWAI HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 LAPWAI DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts LAPWAI HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of LAPWAI HIGH SCHOOL in the District is - 6.4% percentage points.
11. If LAPWAI HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 6 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's LAPWAI HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.4% or more percentage points. For example, LAPWAI HIGH SCHOOL reports a 2010 -6.4% percentage point gap between the percentage of girls enrolled (66) compared to boys enrolled (59) and the percentage of athletes who are girls (45) compared to boys (52). If LAPWAI HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 6 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its LAPWAI HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
LAPWAI HIGH SCHOOL	N/A	6.7%	-6.4%

14. For these reasons, LAPWAI HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁸⁸

15. At LAPWAI HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -6.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's LAPWAI HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's LAPWAI HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

⁸⁸ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that LAPWAI HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁸⁹

18. By not providing equal opportunities for its female LAPWAI HIGH SCHOOL students, the LAPWAI DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁸⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).⁹⁰

25. 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.

26. The LAPWAI DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female LAPWAI HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate LAPWAI HIGH SCHOOL in the LAPWAI 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 Seattle 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).

⁹⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MERIDIAN JOINT SCHOOL DISTRICT #2
1303 E CENTRAL DR
MERIDIAN, IDAHO 83642

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MERIDIAN JOINT SCHOOL DISTRICT #2 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MERIDIAN HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MERIDIAN JOINT SCHOOL DISTRICT #2 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MERIDIAN HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MERIDIAN HIGH SCHOOL in the District is - 6.3% percentage points.
11. If MERIDIAN HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 42 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MERIDIAN HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.3% or more percentage points. For example, MERIDIAN HIGH SCHOOL reports a 2010 -6.3% percentage point gap between the percentage of girls enrolled (644) compared to boys enrolled (795) and the percentage of athletes who are girls (255) compared to boys (409). If MERIDIAN HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 42 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MERIDIAN HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MERIDIAN HIGH SCHOOL	-9.0%	-13.3%	-6.3%

14. For these reasons, MERIDIAN HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁹¹

15. At MERIDIAN HIGH SCHOOL, the participation gap has increased or continued from -9.0% percentage points in 2004 to -6.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MERIDIAN HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MERIDIAN HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁹¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that MERIDIAN HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁹²

18. By not providing equal opportunities for its female MERIDIAN HIGH SCHOOL students, the MERIDIAN JOINT SCHOOL DISTRICT #2 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁹² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁹³

25. 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.

26. The MERIDIAN JOINT SCHOOL DISTRICT #2 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MERIDIAN HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MERIDIAN HIGH SCHOOL in the MERIDIAN JOINT SCHOOL DISTRICT #2 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁹³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

OROFINO JOINT SCHOOL DISTRICT #171
1051 MICHIGAN AVE
OROFINO, IDAHO 83544

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 OROFINO JOINT SCHOOL DISTRICT #171 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts OROFINO HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 OROFINO JOINT SCHOOL DISTRICT #171 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts OROFINO HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of OROFINO HIGH SCHOOL in the District is - 6.2% percentage points.
11. If OROFINO HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 14 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s OROFINO HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.2% or more percentage points. For example, OROFINO HIGH SCHOOL reports a 2010 -6.2% percentage point gap between the percentage of girls enrolled (144) compared to boys enrolled (161) and the percentage of athletes who are girls (96) compared to boys (138). If OROFINO HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 14 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its OROFINO HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
OROFINO HIGH SCHOOL	N/A	N/A	-6.2%

14. For these reasons, OROFINO HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁹⁴

15. At OROFINO HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -6.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s OROFINO HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s OROFINO HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁹⁴ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that OROFINO HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁹⁵

18. By not providing equal opportunities for its female OROFINO HIGH SCHOOL students, the OROFINO JOINT SCHOOL DISTRICT #171 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁹⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁹⁶

25. 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.

26. The OROFINO JOINT SCHOOL DISTRICT #171 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female OROFINO HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate OROFINO HIGH SCHOOL in the OROFINO JOINT SCHOOL DISTRICT #171 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

⁹⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

KOOTENAI SCHOOL DISTRICT #274
13030 E O'GARA RD
HARRISON, IDAHO 83833

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 KOOTENAI SCHOOL DISTRICT #274 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts KOOTENAI HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 KOOTENAI SCHOOL DISTRICT #274 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts KOOTENAI HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of KOOTENAI HIGH SCHOOL in the District is - 6.1% percentage points.
11. If KOOTENAI HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 7 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s KOOTENAI HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -6.1% or more percentage points. For example, KOOTENAI HIGH SCHOOL reports a 2010 -6.1% percentage point gap between the percentage of girls enrolled (68) compared to boys enrolled (72) and the percentage of athletes who are girls (48) compared to boys (65). If KOOTENAI HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 7 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its KOOTENAI HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
KOOTENAI HIGH SCHOOL	N/A	N/A	-6.1%

14. For these reasons, KOOTENAI HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.⁹⁷

15. At KOOTENAI HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -6.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s KOOTENAI HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s KOOTENAI HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

⁹⁷ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that KOOTENAI HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.⁹⁸

18. By not providing equal opportunities for its female KOOTENAI HIGH SCHOOL students, the KOOTENAI SCHOOL DISTRICT #274 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

⁹⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).⁹⁹

25. 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.

26. The KOOTENAI SCHOOL DISTRICT #274 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female KOOTENAI HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate KOOTENAI HIGH SCHOOL in the KOOTENAI SCHOOL DISTRICT #274 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 Seattle 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).

⁹⁹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BOISE INDEPEDENT SCHOOL DISTRICT #1
8169 W VICTORY RD
BOISE,IDAHO 83709

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BOISE INDEPEDENT SCHOOL DISTRICT #1 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts TIMBERLINE HIGH SCHOOL - BOISE, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BOISE INDEPEDENT SCHOOL DISTRICT #1 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts TIMBERLINE HIGH SCHOOL - BOISE does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of TIMBERLINE HIGH SCHOOL - BOISE in the District is -5.7% percentage points.

11. If TIMBERLINE HIGH SCHOOL - BOISE in the District provided girls with opportunities substantially proportionate to enrollment, an additional 46 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's TIMBERLINE HIGH SCHOOL - BOISE that reported athletes in 2010 have a participation gaps of -5.7% or more percentage points. For example, TIMBERLINE HIGH SCHOOL - BOISE reports a 2010 -5.7% percentage point gap between the percentage of girls enrolled (535) compared to boys enrolled (581) and the percentage of athletes who are girls (336) compared to boys (460). If TIMBERLINE HIGH SCHOOL - BOISE provided girls with proportional athletic opportunities, an additional 46 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its TIMBERLINE HIGH SCHOOL - BOISE since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
TIMBERLINE HIGH SCHOOL - BOISE	N/A	N/A	-5.7%

14. For these reasons, TIMBERLINE HIGH SCHOOL - BOISE cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰⁰

15. At TIMBERLINE HIGH SCHOOL - BOISE, the participation gap has increased or continued from N/A percentage points in 2004 to -5.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's TIMBERLINE HIGH SCHOOL - BOISE indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁰⁰ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's TIMBERLINE HIGH SCHOOL - BOISE (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that TIMBERLINE HIGH SCHOOL - BOISE girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁰¹

18. By not providing equal opportunities for its female TIMBERLINE HIGH SCHOOL - BOISE students, the BOISE INDEPEDENT SCHOOL DISTRICT #1 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁰¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁰²

25. 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.

26. The BOISE INDEPEDENT SCHOOL DISTRICT #1 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female TIMBERLINE HIGH SCHOOL - BOISE students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate TIMBERLINE HIGH SCHOOL - BOISE in the BOISE INDEPEDENT SCHOOL DISTRICT #1 to determine whether they are

¹⁰² As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BOISE INDEPEDENT SCHOOL DISTRICT #1
8169 W VICTORY RD
BOISE,IDAHO 83709

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BOISE INDEPEDENT SCHOOL DISTRICT #1 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts BOISE SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BOISE INDEPEDENT SCHOOL DISTRICT #1 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts BOISE SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BOISE SENIOR HIGH SCHOOL in the District is -5.7% percentage points.

11. If BOISE SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 36 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's BOISE SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -5.7% or more percentage points. For example, BOISE SENIOR HIGH SCHOOL reports a 2010 -5.7% percentage point gap between the percentage of girls enrolled (698) compared to boys enrolled (749) and the percentage of athletes who are girls (270) compared to boys (365). If BOISE SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 36 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its BOISE SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
BOISE SENIOR HIGH SCHOOL	N/A	N/A	-5.7%

14. For these reasons, BOISE SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰³

15. At BOISE SENIOR HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -5.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's BOISE SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁰³ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's BOISE SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that BOISE SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁰⁴

18. By not providing equal opportunities for its female BOISE SENIOR HIGH SCHOOL students, the BOISE INDEPENDENT SCHOOL DISTRICT #1 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁰⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁰⁵

25. 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.

26. The BOISE INDEPEDENT SCHOOL DISTRICT #1 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BOISE SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate BOISE SENIOR HIGH SCHOOL in the BOISE INDEPEDENT SCHOOL DISTRICT #1 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹⁰⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

PARMA SCHOOL DISTRICT
805 E MCCONNELL AVE
PARMA, IDAHO 83660

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 PARMA SCHOOL DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts PARMA HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 PARMA SCHOOL DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts PARMA HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of PARMA HIGH SCHOOL in the District is -5.7% percentage points.
11. If PARMA HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 19 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s PARMA HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -5.7% or more percentage points. For example, PARMA HIGH SCHOOL reports a 2010 -5.7% percentage point gap between the percentage of girls enrolled (168) compared to boys enrolled (154) and the percentage of athletes who are girls (158) compared to boys (182). If PARMA HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 19 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its PARMA HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
PARMA HIGH SCHOOL	-6.8%	N/A	-5.7%

14. For these reasons, PARMA HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰⁶

15. At PARMA HIGH SCHOOL, the participation gap has increased or continued from -6.8% percentage points in 2004 to -5.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s PARMA HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s PARMA HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹⁰⁶ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that PARMA HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁰⁷

18. By not providing equal opportunities for its female PARMA HIGH SCHOOL students, the PARMA SCHOOL DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁰⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹⁰⁸

25. 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.

26. The PARMA SCHOOL DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female PARMA HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate PARMA HIGH SCHOOL in the PARMA SCHOOL 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 Seattle 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).

¹⁰⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

NORTH GEM DISTRICT
P.O. BOX 70
BANCROFT, IDAHO 83217

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 NORTH GEM DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts NORTH GEM SENIOR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 NORTH GEM DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts NORTH GEM SENIOR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of NORTH GEM SENIOR HIGH SCHOOL in the District is -5.6% percentage points.
11. If NORTH GEM SENIOR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 6 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's NORTH GEM SENIOR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -5.6% or more percentage points. For example, NORTH GEM SENIOR HIGH SCHOOL reports a 2010 -5.6% percentage point gap between the percentage of girls enrolled (30) compared to boys enrolled (30) and the percentage of athletes who are girls (48) compared to boys (60). If NORTH GEM SENIOR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 6 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its NORTH GEM SENIOR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
NORTH GEM SENIOR HIGH SCHOOL	N/A	-6.3%	-5.6%

14. For these reasons, NORTH GEM SENIOR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰⁹

15. At NORTH GEM SENIOR HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -5.6% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's NORTH GEM SENIOR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's NORTH GEM SENIOR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹⁰⁹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that NORTH GEM SENIOR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹⁰

18. By not providing equal opportunities for its female NORTH GEM SENIOR HIGH SCHOOL students, the NORTH GEM DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹¹⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹¹¹

25. 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.

26. The NORTH GEM DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female NORTH GEM SENIOR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate NORTH GEM SENIOR HIGH SCHOOL in the NORTH GEM DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹¹¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

ONEIDA COUNTY DISTRICT
25 E 50 S, SUITE A
MALAD, IDAHO 83252

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 ONEIDA COUNTY DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MALAD HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 ONEIDA COUNTY DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MALAD HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MALAD HIGH SCHOOL in the District is -5.4% percentage points.
11. If MALAD HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 12 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MALAD HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -5.4% or more percentage points. For example, MALAD HIGH SCHOOL reports a 2010 -5.4% percentage point gap between the percentage of girls enrolled (117) compared to boys enrolled (162) and the percentage of athletes who are girls (84) compared to boys (146). If MALAD HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 12 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MALAD HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MALAD HIGH SCHOOL	N/A	-11.6%	-5.4%

14. For these reasons, MALAD HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹¹²

15. At MALAD HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -5.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MALAD HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MALAD HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹¹² *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that MALAD HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹³

18. By not providing equal opportunities for its female MALAD HIGH SCHOOL students, the ONEIDA COUNTY DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹¹³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹¹⁴

25. 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.

26. The ONEIDA COUNTY DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MALAD HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MALAD HIGH SCHOOL in the ONEIDA COUNTY 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 Seattle 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).

¹¹⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

POTLATCH DISTRICT
130 6TH ST
POTLATCH, IDAHO 83855

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 POTLATCH DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts POTLATCH JR-SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 POTLATCH DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts POTLATCH JR-SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of POTLATCH JR-SR HIGH SCHOOL in the District is -5.3% percentage points.
11. If POTLATCH JR-SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 9 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s POTLATCH JR-SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -5.3% or more percentage points. For example, POTLATCH JR-SR HIGH SCHOOL reports a 2010 -5.3% percentage point gap between the percentage of girls enrolled (93) compared to boys enrolled (104) and the percentage of athletes who are girls (67) compared to boys (93). If POTLATCH JR-SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 9 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its POTLATCH JR-SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
POTLATCH JR-SR HIGH SCHOOL	-0.5%	N/A	-5.3%

14. For these reasons, POTLATCH JR-SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹¹⁵

15. At POTLATCH JR-SR HIGH SCHOOL, the participation gap has increased or continued from -0.5% percentage points in 2004 to -5.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s POTLATCH JR-SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s POTLATCH JR-SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹¹⁵ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that POTLATCH JR-SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹⁶

18. By not providing equal opportunities for its female POTLATCH JR-SR HIGH SCHOOL students, the POTLATCH DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹¹⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹¹⁷

25. 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.

26. The POTLATCH DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female POTLATCH JR-SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate POTLATCH JR-SR HIGH SCHOOL in the POTLATCH 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 Seattle 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).

¹¹⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

FIRTH
P.O. BOX 69
FIRTH, IDAHO 83236

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 FIRTH (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts FIRTH HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 FIRTH receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts FIRTH HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of FIRTH HIGH SCHOOL in the District is -9.1% percentage points.
11. If FIRTH HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 17 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's FIRTH HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.1% or more percentage points. For example, FIRTH HIGH SCHOOL reports a 2010 -9.1% percentage point gap between the percentage of girls enrolled (112) compared to boys enrolled (106) and the percentage of athletes who are girls (77) compared to boys (105). If FIRTH HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 17 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its FIRTH HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
FIRTH HIGH SCHOOL	-13.1%	N/A	-9.1%

14. For these reasons, FIRTH HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁰

15. At FIRTH HIGH SCHOOL, the participation gap has increased or continued from -13.1% percentage points in 2004 to -9.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's FIRTH HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's FIRTH HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that FIRTH HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹

¹⁰ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

¹¹ Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of

18. By not providing equal opportunities for its female FIRTH HIGH SCHOOL students, the FIRTH 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.

(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.

24. 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).¹²

25. 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.

26. The FIRTH data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female FIRTH HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

- a. The Seattle OCR investigate FIRTH HIGH SCHOOL in the FIRTH 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 Seattle 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 Seattle 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).

¹² As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

d. The Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

WILDER SCHOOL DISTRICT #133
218 GOLDEN GATE AVE E
WILDER, IDAHO 83676

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 WILDER SCHOOL DISTRICT #133 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts WILDER MIDDLE/HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 WILDER SCHOOL DISTRICT #133 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts WILDER MIDDLE/HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WILDER MIDDLE/HIGH SCHOOL in the District is -5.2% percentage points.

11. If WILDER MIDDLE/HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 4 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC

numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's WILDER MIDDLE/HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -5.2% or more percentage points. For example, WILDER MIDDLE/HIGH SCHOOL reports a 2010 -5.2% percentage point gap between the percentage of girls enrolled (94) compared to boys enrolled (91) and the percentage of athletes who are girls (36) compared to boys (43). If WILDER MIDDLE/HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 4 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its WILDER MIDDLE/HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
WILDER MIDDLE/HIGH SCHOOL	2.9%	0.0%	-5.2%

14. For these reasons, WILDER MIDDLE/HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹¹⁸

15. At WILDER MIDDLE/HIGH SCHOOL, the participation gap has increased or continued from 2.9% percentage points in 2004 to -5.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's WILDER MIDDLE/HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹¹⁸ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's WILDER MIDDLE/HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that WILDER MIDDLE/HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹¹⁹

18. By not providing equal opportunities for its female WILDER MIDDLE/HIGH SCHOOL students, the WILDER SCHOOL DISTRICT #133 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹¹⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹²⁰

25. 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.

26. The WILDER SCHOOL DISTRICT #133 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WILDER MIDDLE/HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate WILDER MIDDLE/HIGH SCHOOL in the WILDER SCHOOL DISTRICT #133 to determine whether they are providing

¹²⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MURTAUGH JOINT DISTRICT
500 W BOYD ST
MURTAUGH, IDAHO 83334

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MURTAUGH JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MURTAUGH HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MURTAUGH JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MURTAUGH HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MURTAUGH HIGH SCHOOL in the District is - 5.0% percentage points.
11. If MURTAUGH HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 4 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MURTAUGH HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -5.0% or more percentage points. For example, MURTAUGH HIGH SCHOOL reports a 2010 -5.0% percentage point gap between the percentage of girls enrolled (27) compared to boys enrolled (26) and the percentage of athletes who are girls (40) compared to boys (47). If MURTAUGH HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 4 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MURTAUGH HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MURTAUGH HIGH SCHOOL	0.0%	N/A	-5.0%

14. For these reasons, MURTAUGH HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹²¹

15. At MURTAUGH HIGH SCHOOL, the participation gap has increased or continued from 0.0% percentage points in 2004 to -5.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MURTAUGH HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MURTAUGH HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹²¹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that MURTAUGH HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹²²

18. By not providing equal opportunities for its female MURTAUGH HIGH SCHOOL students, the MURTAUGH JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹²² *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹²³

25. 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.

26. The MURTAUGH JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MURTAUGH HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MURTAUGH HIGH SCHOOL in the MURTAUGH JOINT 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 Seattle 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).

¹²³ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

GLENNS FERRY SCHOOL DISTRICT #192
800 OLD HIGHWAY 30
GLENNS FERRY, IDAHO 83623

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 GLENNS FERRY SCHOOL DISTRICT #192 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts GLENNS FERRY HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 GLENN'S FERRY SCHOOL DISTRICT #192 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts GLENN'S FERRY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of GLENN'S FERRY HIGH SCHOOL in the District is -4.8% percentage points.

11. If GLENN'S FERRY HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 8 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's GLENN'S FERRY HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -4.8% or more percentage points. For example, GLENN'S FERRY HIGH SCHOOL reports a 2010 -4.8% percentage point gap between the percentage of girls enrolled (69) compared to boys enrolled (70) and the percentage of athletes who are girls (78) compared to boys (96). If GLENN'S FERRY HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 8 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its GLENN'S FERRY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
GLENN'S FERRY HIGH SCHOOL	-5.0%	N/A	-4.8%

14. For these reasons, GLENN'S FERRY HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹²⁴

15. At GLENN'S FERRY HIGH SCHOOL, the participation gap has increased or continued from -5.0% percentage points in 2004 to -4.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's GLENN'S FERRY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹²⁴ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's GLENN'S FERRY HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that GLENN'S FERRY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹²⁵

18. By not providing equal opportunities for its female GLENN'S FERRY HIGH SCHOOL students, the GLENN'S FERRY SCHOOL DISTRICT #192 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹²⁵ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹²⁶

25. 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.

26. The GLENN'S FERRY SCHOOL DISTRICT #192 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female GLENN'S FERRY HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate GLENN'S FERRY HIGH SCHOOL in the GLENN'S FERRY SCHOOL DISTRICT #192 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹²⁶ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

TETON COUNTY DISTRICT
P.O. BOX 775
DRIGGS, IDAHO 83422

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 TETON COUNTY DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts TETON HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 TETON COUNTY DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts TETON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of TETON HIGH SCHOOL in the District is -4.4% percentage points.
11. If TETON HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 16 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s TETON HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -4.4% or more percentage points. For example, TETON HIGH SCHOOL reports a 2010 -4.4% percentage point gap between the percentage of girls enrolled (177) compared to boys enrolled (219) and the percentage of athletes who are girls (146) compared to boys (216). If TETON HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 16 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its TETON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
TETON HIGH SCHOOL	N/A	-4.2%	-4.4%

14. For these reasons, TETON HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹²⁷

15. At TETON HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -4.4% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s TETON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s TETON HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹²⁷ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that TETON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹²⁸

18. By not providing equal opportunities for its female TETON HIGH SCHOOL students, the TETON COUNTY DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹²⁸ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹²⁹

25. 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.

26. The TETON COUNTY DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female TETON HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate TETON HIGH SCHOOL in the TETON COUNTY 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 Seattle 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).

¹²⁹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MARSING SCHOOL DISTRICT #363
P.O. BOX 340
MARSING, IDAHO 83639

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MARSING SCHOOL DISTRICT #363 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MARSING HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MARSING SCHOOL DISTRICT #363 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MARSING HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MARSING HIGH SCHOOL in the District is - 4.2% percentage points.
11. If MARSING HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 10 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MARSING HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -4.2% or more percentage points. For example, MARSING HIGH SCHOOL reports a 2010 -4.2% percentage point gap between the percentage of girls enrolled (105) compared to boys enrolled (120) and the percentage of athletes who are girls (102) compared to boys (138). If MARSING HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 10 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MARSING HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MARSING HIGH SCHOOL	N/A	N/A	-4.2%

14. For these reasons, MARSING HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³⁰

15. At MARSING HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -4.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MARSING HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MARSING HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹³⁰ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that MARSING HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹³¹

18. By not providing equal opportunities for its female MARSING HIGH SCHOOL students, the MARSING SCHOOL DISTRICT #363 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹³¹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹³²

25. 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.

26. The MARSING SCHOOL DISTRICT #363 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MARSING HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MARSING HIGH SCHOOL in the MARSING SCHOOL DISTRICT #363 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 Seattle 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).

¹³² As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

HANSEN DISTRICT
550 S MAIN
HANSEN, IDAHO 83334

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 HANSEN DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts HANSEN JR/SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 HANSEN DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts HANSEN JR/SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of HANSEN JR/SR HIGH SCHOOL in the District is -4.1% percentage points.
11. If HANSEN JR/SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 5 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s HANSEN JR/SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -4.1% or more percentage points. For example, HANSEN JR/SR HIGH SCHOOL reports a 2010 -4.1% percentage point gap between the percentage of girls enrolled (78) compared to boys enrolled (89) and the percentage of athletes who are girls (52) compared to boys (70). If HANSEN JR/SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 5 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its HANSEN JR/SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
HANSEN JR/SR HIGH SCHOOL	N/A	3.6%	-4.1%

14. For these reasons, HANSEN JR/SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³³

15. At HANSEN JR/SR HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -4.1% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s HANSEN JR/SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s HANSEN JR/SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹³³ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that HANSEN JR/SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹³⁴

18. By not providing equal opportunities for its female HANSEN JR/SR HIGH SCHOOL students, the HANSEN DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹³⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹³⁵

25. 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.

26. The HANSEN DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female HANSEN JR/SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate HANSEN JR/SR HIGH SCHOOL in the HANSEN 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 Seattle 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).

¹³⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

KENDRICK JOINT DISTRICT
P.O. BOX 283
KENDRICK, IDAHO 83537

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 KENDRICK JOINT DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts KENDRICK JR-SR HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 KENDRICK JOINT DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts KENDRICK JR-SR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of KENDRICK JR-SR HIGH SCHOOL in the District is -3.7% percentage points.
11. If KENDRICK JR-SR HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 4 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s KENDRICK JR-SR HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -3.7% or more percentage points. For example, KENDRICK JR-SR HIGH SCHOOL reports a 2010 -3.7% percentage point gap between the percentage of girls enrolled (51) compared to boys enrolled (72) and the percentage of athletes who are girls (40) compared to boys (66). If KENDRICK JR-SR HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 4 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its KENDRICK JR-SR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
KENDRICK JR-SR HIGH SCHOOL	N/A	0.3%	-3.7%

14. For these reasons, KENDRICK JR-SR HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³⁶

15. At KENDRICK JR-SR HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -3.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s KENDRICK JR-SR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s KENDRICK JR-SR HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹³⁶ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that KENDRICK JR-SR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹³⁷

18. By not providing equal opportunities for its female KENDRICK JR-SR HIGH SCHOOL students, the KENDRICK JOINT DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹³⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹³⁸

25. 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.

26. The KENDRICK JOINT DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female KENDRICK JR-SR HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate KENDRICK JR-SR HIGH SCHOOL in the KENDRICK JOINT DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹³⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

WEST JEFFERSON
1256 E 1500 N
TERRETON, IDAHO 83450

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 WEST JEFFERSON (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts WEST JEFFERSON HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 WEST JEFFERSON receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts WEST JEFFERSON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WEST JEFFERSON HIGH SCHOOL in the District is -3.3% percentage points.
11. If WEST JEFFERSON HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 6 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's WEST JEFFERSON HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -3.3% or more percentage points. For example, WEST JEFFERSON HIGH SCHOOL reports a 2010 -3.3% percentage point gap between the percentage of girls enrolled (83) compared to boys enrolled (89) and the percentage of athletes who are girls (85) compared to boys (104). If WEST JEFFERSON HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 6 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its WEST JEFFERSON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
WEST JEFFERSON HIGH SCHOOL	-9.0%	N/A	-3.3%

14. For these reasons, WEST JEFFERSON HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³⁹

15. At WEST JEFFERSON HIGH SCHOOL, the participation gap has increased or continued from -9.0% percentage points in 2004 to -3.3% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's WEST JEFFERSON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's WEST JEFFERSON HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and

¹³⁹ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

there is no reason to believe that WEST JEFFERSON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴⁰

18. By not providing equal opportunities for its female WEST JEFFERSON HIGH SCHOOL students, the WEST JEFFERSON 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁴⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁴¹

25. 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.

26. The WEST JEFFERSON data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WEST JEFFERSON HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate WEST JEFFERSON HIGH SCHOOL in the WEST JEFFERSON 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 Seattle 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).

¹⁴¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

MELBA SCHOOL DISTRICT NO. 136J
P.O. BOX 185
MELBA, IDAHO 83641

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 MELBA SCHOOL DISTRICT NO. 136J (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts MELBA HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 MELBA SCHOOL DISTRICT NO. 136J receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts MELBA HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MELBA HIGH SCHOOL in the District is -2.8% percentage points.
11. If MELBA HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 7 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s MELBA HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -2.8% or more percentage points. For example, MELBA HIGH SCHOOL reports a 2010 -2.8% percentage point gap between the percentage of girls enrolled (117) compared to boys enrolled (118) and the percentage of athletes who are girls (118) compared to boys (133). If MELBA HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 7 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its MELBA HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
MELBA HIGH SCHOOL	-7.4%	N/A	-2.8%

14. For these reasons, MELBA HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁴²

15. At MELBA HIGH SCHOOL, the participation gap has increased or continued from -7.4% percentage points in 2004 to -2.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s MELBA HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s MELBA HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason

¹⁴² *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

to believe that MELBA HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴³

18. By not providing equal opportunities for its female MELBA HIGH SCHOOL students, the MELBA SCHOOL DISTRICT NO. 136J 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁴³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹⁴⁴

25. 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.

26. The MELBA SCHOOL DISTRICT NO. 136J data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MELBA HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate MELBA HIGH SCHOOL in the MELBA SCHOOL DISTRICT NO. 136J to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹⁴⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

SODA SPRINGS JT. SCHOOL DISTRICT #150
250 E 2ND S
SODA SPRINGS, IDAHO 83276

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 SODA SPRINGS JT. SCHOOL DISTRICT #150 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts SODA SPRINGS HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 SODA SPRINGS JT. SCHOOL DISTRICT #150 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts SODA SPRINGS HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SODA SPRINGS HIGH SCHOOL in the District is -1.8% percentage points.

11. If SODA SPRINGS HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 4 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's SODA SPRINGS HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -1.8% or more percentage points. For example, SODA SPRINGS HIGH SCHOOL reports a 2010 -1.8% percentage point gap between the percentage of girls enrolled (101) compared to boys enrolled (117) and the percentage of athletes who are girls (111) compared to boys (138). If SODA SPRINGS HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 4 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its SODA SPRINGS HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
SODA SPRINGS HIGH SCHOOL	-5.8%	-11.5%	-1.8%

14. For these reasons, SODA SPRINGS HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁴⁵

15. At SODA SPRINGS HIGH SCHOOL, the participation gap has increased or continued from -5.8% percentage points in 2004 to -1.8% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's SODA SPRINGS HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁴⁵ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's SODA SPRINGS HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that SODA SPRINGS HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴⁶

18. By not providing equal opportunities for its female SODA SPRINGS HIGH SCHOOL students, the SODA SPRINGS JT. SCHOOL DISTRICT #150 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

¹⁴⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁴⁷

25. 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.

26. The SODA SPRINGS JT. SCHOOL DISTRICT #150 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SODA SPRINGS HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate SODA SPRINGS HIGH SCHOOL in the SODA SPRINGS JT. SCHOOL DISTRICT #150 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹⁴⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

LEWISTON SCHOOL DISTRICT #1
3317 12TH ST
LEWISTON, IDAHO 83501

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 LEWISTON SCHOOL DISTRICT #1 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts LEWISTON HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 LEWISTON SCHOOL DISTRICT #1 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts LEWISTON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of LEWISTON HIGH SCHOOL in the District is -9.0% percentage points.
11. If LEWISTON HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 53 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s LEWISTON HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -9.0% or more percentage points. For example, LEWISTON HIGH SCHOOL reports a 2010 -9.0% percentage point gap between the percentage of girls enrolled (510) compared to boys enrolled (567) and the percentage of athletes who are girls (227) compared to boys (365). If LEWISTON HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 53 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its LEWISTON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
LEWISTON HIGH SCHOOL	N/A	N/A	-9.0%

14. For these reasons, LEWISTON HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹³

15. At LEWISTON HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -9.0% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s LEWISTON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s LEWISTON HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹³ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that LEWISTON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴

18. By not providing equal opportunities for its female LEWISTON HIGH SCHOOL students, the LEWISTON SCHOOL DISTRICT #1 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁴ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁵

25. 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.

26. The LEWISTON SCHOOL DISTRICT #1 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female LEWISTON HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate LEWISTON HIGH SCHOOL in the LEWISTON SCHOOL DISTRICT #1 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 Seattle 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).

¹⁵ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

BLAINE COUNTY DISTRICT
118 W BULLION ST
HAILEY, IDAHO 83333

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 BLAINE COUNTY DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts WOOD RIVER HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 BLAINE COUNTY DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts WOOD RIVER HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WOOD RIVER HIGH SCHOOL in the District is -1.2% percentage points.
11. If WOOD RIVER HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 6 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s WOOD RIVER HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -1.2% or more percentage points. For example, WOOD RIVER HIGH SCHOOL reports a 2010 -1.2% percentage point gap between the percentage of girls enrolled (379) compared to boys enrolled (425) and the percentage of athletes who are girls (224) compared to boys (264). If WOOD RIVER HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 6 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its WOOD RIVER HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
WOOD RIVER HIGH SCHOOL	N/A	-7.9%	-1.2%

14. For these reasons, WOOD RIVER HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁴⁸

15. At WOOD RIVER HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -1.2% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s WOOD RIVER HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s WOOD RIVER HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹⁴⁸ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that WOOD RIVER HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁴⁹

18. By not providing equal opportunities for its female WOOD RIVER HIGH SCHOOL students, the BLAINE COUNTY DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁴⁹ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution’s other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).¹⁵⁰

25. 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.

26. The BLAINE COUNTY DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WOOD RIVER HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate WOOD RIVER HIGH SCHOOL in the BLAINE COUNTY 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 Seattle 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).

¹⁵⁰ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

c. If any violations are found, the Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE
915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099**

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

HOMEDALE SCHOOL DISTRICT #370
116 E OWYHEE AVE
HOMEDALE, IDAHO 83628

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 HOMEDALE SCHOOL DISTRICT #370 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts HOMEDALE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 HOMEDALE SCHOOL DISTRICT #370 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts HOMEDALE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of HOMEDALE HIGH SCHOOL in the District is - 8.7% percentage points.
11. If HOMEDALE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 28 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's HOMEDALE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.7% or more percentage points. For example, HOMEDALE HIGH SCHOOL reports a 2010 -8.7% percentage point gap between the percentage of girls enrolled (176) compared to boys enrolled (168) and the percentage of athletes who are girls (137) compared to boys (186). If HOMEDALE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 28 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its HOMEDALE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
HOMEDALE HIGH SCHOOL	-5.4%	N/A	-8.7%

14. For these reasons, HOMEDALE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁶

15. At HOMEDALE HIGH SCHOOL, the participation gap has increased or continued from -5.4% percentage points in 2004 to -8.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's HOMEDALE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's HOMEDALE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

¹⁶ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that HOMEDALE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.¹⁷

18. By not providing equal opportunities for its female HOMEDALE HIGH SCHOOL students, the HOMEDALE SCHOOL DISTRICT #370 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

¹⁷ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).¹⁸

25. 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.

26. The HOMEDALE SCHOOL DISTRICT #370 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female HOMEDALE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate HOMEDALE HIGH SCHOOL in the HOMEDALE SCHOOL DISTRICT #370 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

¹⁸ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

GRANGEVILLE JOINT DISTRICT 241
714 JEFFERSON ST
GRANGEVILLE, IDAHO 83530

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 GRANGEVILLE JOINT DISTRICT 241 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts GRANGEVILLE HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 GRANGEVILLE JOINT DISTRICT 241 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts GRANGEVILLE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of GRANGEVILLE HIGH SCHOOL in the District is -8.7% percentage points.

11. If GRANGEVILLE HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 22 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's GRANGEVILLE HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.7% or more percentage points. For example, GRANGEVILLE HIGH SCHOOL reports a 2010 -8.7% percentage point gap between the percentage of girls enrolled (132) compared to boys enrolled (128) and the percentage of athletes who are girls (106) compared to boys (146). If GRANGEVILLE HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 22 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its GRANGEVILLE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
GRANGEVILLE HIGH SCHOOL	N/A	-11.5%	-8.7%

14. For these reasons, GRANGEVILLE HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.¹⁹

15. At GRANGEVILLE HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -8.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's GRANGEVILLE HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

¹⁹ "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's GRANGEVILLE HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that GRANGEVILLE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²⁰

18. By not providing equal opportunities for its female GRANGEVILLE HIGH SCHOOL students, the GRANGEVILLE JOINT DISTRICT 241 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

²⁰ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).²¹

25. 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.

26. The GRANGEVILLE JOINT DISTRICT 241 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female GRANGEVILLE HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate GRANGEVILLE HIGH SCHOOL in the GRANGEVILLE JOINT DISTRICT 241 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

²¹ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

CASTLEFORD DISTRICT
500 MAIN ST
CASTLEFORD, IDAHO 83321

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 CASTLEFORD DISTRICT (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts CASTLEFORD HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 CASTLEFORD DISTRICT receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.

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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts CASTLEFORD HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CASTLEFORD HIGH SCHOOL in the District is -8.7% percentage points.

11. If CASTLEFORD HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 11 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being

reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District's CASTLEFORD HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.7% or more percentage points. For example, CASTLEFORD HIGH SCHOOL reports a 2010 -8.7% percentage point gap between the percentage of girls enrolled (155) compared to boys enrolled (152) and the percentage of athletes who are girls (51) compared to boys (71). If CASTLEFORD HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 11 girls would be able play sports.

13. The District's 2006 CRDC data also show continuing or increasing substantial female participation gaps at its CASTLEFORD HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
CASTLEFORD HIGH SCHOOL	-5.6%	-0.8%	-8.7%

14. For these reasons, CASTLEFORD HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.²²

15. At CASTLEFORD HIGH SCHOOL, the participation gap has increased or continued from -5.6% percentage points in 2004 to -8.7% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District's CASTLEFORD HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls' interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.

²² "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District's CASTLEFORD HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no reason to believe that CASTLEFORD HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²³

18. By not providing equal opportunities for its female CASTLEFORD HIGH SCHOOL students, the CASTLEFORD DISTRICT 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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":

²³ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.

24. 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).²⁴

25. 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.

26. The CASTLEFORD DISTRICT data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CASTLEFORD HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate CASTLEFORD HIGH SCHOOL in the CASTLEFORD DISTRICT to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

²⁴ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE**

915 SECOND AVENUE ROOM 3310
SEATTLE, WA 98174-1099

ADMINISTRATIVE COMPLAINT

COMPLAINANT

June 23, 2011

RECIPIENT

FRUITLAND SCHOOL DISTRICT #373
P.O. BOX A
FRUITLAND, IDAHO 83619

PRELIMINARY STATEMENT

1. This Complaint is filed by 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 there under. *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 FRUITLAND SCHOOL DISTRICT #373 (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), as well as information from IHSAA, the Idaho High School Activities Association which sanctioned sports including those not being offered to girls at the Districts FRUITLAND HIGH SCHOOL, 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 complainant requests that the Seattle Office for Civil Rights (“OCR”) investigate this high school 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 Seattle 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 complainant 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 FRUITLAND SCHOOL DISTRICT #373 receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the Idaho Department of Education, and under the authority of the Idaho State Superintendent of Public Instruction (ISSPI), also recipients of federal financial assistance.
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 the District high school to Idaho High School Activities Association (IHSAA) and pursuant to the 2004 and 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. The Districts FRUITLAND HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of FRUITLAND HIGH SCHOOL in the District is - 8.6% percentage points.
11. If FRUITLAND HIGH SCHOOL in the District provided girls with opportunities substantially proportionate to enrollment, an additional 36 girls would be able to play sports. There are further indications of erroneous or fictitious CRDC numbers being reported by the high school that inflate girls participation numbers which have also been padded with cheerleading and dance activity numbers.

12. More specifically, the District’s FRUITLAND HIGH SCHOOL that reported athletes in 2010 have a participation gaps of -8.6% or more percentage points. For example, FRUITLAND HIGH SCHOOL reports a 2010 -8.6% percentage point gap between the percentage of girls enrolled (247) compared to boys enrolled (247) and the percentage of athletes who are girls (170) compared to boys (241). If FRUITLAND HIGH SCHOOL provided girls with proportional athletic opportunities, an additional 36 girls would be able play sports.

13. The District’s 2006 CRDC data also show continuing or increasing substantial female participation gaps at its FRUITLAND HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 DISPARITY	2006 DISPARITY	2010 DISPARITY
FRUITLAND HIGH SCHOOL	N/A	-7.8%	-8.6%

14. For these reasons, FRUITLAND HIGH SCHOOL cannot establish a six-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.²⁵

15. At FRUITLAND HIGH SCHOOL, the participation gap has increased or continued from N/A percentage points in 2004 to -8.6% percentage points in 2010.

16. Information on IHSAA state-sanctioned including other regional interscholastic sports not being offered to girls at the District’s FRUITLAND HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is fully and effectively accommodating girls’ interests and abilities (prong three). IHSAA athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls’ sports that are not currently offered by the District within its normal competitive regions.

17. There are sports sanctioned and not sanctioned by the Idaho High School Activities Association that are not offered to girls at the District’s FRUITLAND HIGH SCHOOL (e.g., such as gymnastics, bowling, golf, water polo, crew, and lacrosse), and there is no

²⁵ *"Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities... Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports... moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."* U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University*.

reason to believe that FRUITLAND HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.²⁶

18. By not providing equal opportunities for its female FRUITLAND HIGH SCHOOL students, the FRUITLAND SCHOOL DISTRICT #373 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

19. 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).

20. 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).

21. 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).

22. 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).

23. 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

²⁶ *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team. 1996 OCR Clarification.*

(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.*

24. 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).²⁷

25. 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.

26. The FRUITLAND SCHOOL DISTRICT #373 data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female FRUITLAND HIGH SCHOOL students to play sports under Title IX's three-part participation test.

RELIEF REQUESTED

27. The complainant requests that:

a. The Seattle OCR investigate FRUITLAND HIGH SCHOOL in the FRUITLAND SCHOOL DISTRICT #373 to determine whether they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

²⁷ As the judge concluded in *Choike vs SRU*, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." *Choike v. Slippery Rock University*, No.06-622; U.S.District Court, PA, July, 2006.

b. The Seattle 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 Seattle 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 Seattle OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

Respectfully submitted,