



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION XV  
MICHIGAN  
OHIO

September 15, 2021

**Via E-mail Only to [naomi.khalil@detroitk12.org](mailto:naomi.khalil@detroitk12.org)**

Ms. Naomi Khalil  
Senior Executive Director  
Office of Equity, Advocacy, and Civil Rights  
Detroit Public Schools Community District  
3011 W. Grand Blvd., 14<sup>th</sup> Floor  
Detroit, Michigan 48202

Re: OCR Docket No. 15-19-1517

Dear Ms. Khalil:

This letter is to notify you of the disposition of the above-referenced complaint filed on April 23, 2019, with the U.S. Department of Education, Office for Civil Rights (OCR), against Detroit Public Schools Community District alleging that the district discriminated against female athletes on the basis of sex. Specifically, the complaint alleged that, in November and December 2018 at Martin Luther King Jr. Senior High School (the School), the district covered the costs of the boys' basketball team's transportation to tournaments but did not cover transportation costs for the girls' basketball team to attend tournaments.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department of Education. Because the district receives federal financial assistance from the Department of Education the district is subject to this law.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: whether the district provided equal athletic opportunity to members of both sexes at the school with respect to travel and per diem allowance, in accordance with the Title IX and its implementing regulation, at 34 C.F.R. § 106.41(c)(4).

The Title IX implementing regulation, at 34 C.F.R. § 106.41, provides that no person shall be discriminated against on the basis of sex in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient of federal funding. The Title IX regulation requires institutions that offer interscholastic athletics programs to provide equal athletic opportunity for members of both sexes with respect to, among other things, travel and per diem allowance. 34 C.F.R. § 106.41(c)(4).

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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As a means of assessing compliance, OCR follows the Department's Policy Interpretation issued December 11, 1979 (the Policy Interpretation). OCR examines whether the availability and quality of benefits, opportunities, and treatment provided are equivalent for members of both sexes. Equivalent is defined as equal or equal in effect. In accordance with the Policy Interpretation, OCR compares the boys' program and the girls' program on an overall basis, not on a sport-by-sport basis (e.g., baseball vs. softball). Where any disparities are noted, OCR then considers whether the differences are negligible. Where the disparities are not negligible, OCR determines whether they were the result of nondiscriminatory factors. Finally, OCR makes a determination as to whether those disparities resulted in the denial of equal athletic opportunity to male or female athletes, either because the disparities collectively were of a substantial and unjustified nature or because the disparities in individual program areas were substantial enough by themselves to deny equality of athletic opportunity.

With regard to travel and per diem, the Policy Interpretation lists five factors to be assessed in determining compliance: (1) modes of transportation; (2) housing furnished during travel; (3) length of stay before and after competitive events; (4) per diem allowances; and (5) dining arrangements.

During its investigation to date, OCR reviewed information provided by the Complainant and the district and interviewed the Complainant and the School administrator in charge of transportation for the athletic teams.

The complaint alleged that in November and December 2018 the district did not provide the School's girls' basketball team with bus transportation to tournaments but did provide transportation to the boys' team for tournaments during that same time period.

The district's data responses to OCR indicated that the only factor listed above related to travel and per diem that would be applicable to the district's interscholastic athletics program is modes of transportation. The district provided OCR with notice of its transportation policy regarding non-league games (which include tournaments), which is that every team is entitled from the district to one bus for a scrimmage or non-league game. Based on that policy, both the girls' basketball team at the School and the boys' team should have had access to a bus for one of the tournaments during the time period relevant to the complaint. The district provided OCR with the girls' and boys' basketball teams' schedules during the relevant time, and the School's athletic director asserted in an interview that the district did not provide either team with transportation to any tournaments during that time period.

When OCR provided the Complainant with the opportunity to respond to the information submitted by the district, the Complainant provided OCR with credible evidence demonstrating that the scheduling information provided by the district was not entirely accurate, and additional information supporting that the boys' basketball team did in fact receive bus transportation to a tournament in December 2018, while the girls' team did not receive transportation to any tournaments during that time period, including a parallel tournament that was substantially the same distance from the School as the boys' tournament.

Before OCR completed its investigation of this complaint, the district requested to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (Section 302). Under Section 302, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the district expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. Although the evidence obtained to date did not indicate any district-wide practice, policy, or procedure resulting in unequal athletic opportunity for boys and girls with respect to travel and per diem allowance, it did raise a compliance concern regarding the benefits the boys' and girls' basketball teams at the School were receiving with respect to transportation.

On September 14, 2021, the district signed the enclosed Resolution Agreement, which, when fully implemented, will address the allegation in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the district's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the district's first monitoring report by January 15, 2022. For questions about implementation of the Agreement, please contact Ms. Kiran Mikhael. She will be overseeing the monitoring and can be reached by telephone at (216) 522-4971 or by e-mail at

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Anne.Mikhael@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-4709, or by e-mail at John.Cohen@ed.gov.

Sincerely,

John Cohen  
Acting Team Leader

Enclosure