



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

June 7, 2023

**Via e-mail only to: [redacted content]**

[redacted content]  
Reminger Co., LPA  
200 Civic Center Drive  
Suite 800  
Columbus, Ohio 43215

Re: OCR Docket No. 15-23-1140

Dear [redacted content]:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Dover City School District (the District) alleging that the District discriminated against female athletes based on sex. Specifically, the Complainant alleged that the District does not provide equal athletic opportunity to female students with respect to the scheduling of high school basketball games.

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. As a recipient of federal financial assistance from the Department the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation of the following legal issue to determine whether the District is discriminating against female students on the basis of sex: whether the District provides equal athletic opportunity to members of both sexes with respect to the scheduling of games and practice times, as required by the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(3).

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and an additional witness and District staff. Prior to completion of OCR's investigation, the District asked to voluntarily resolve this case pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). A summary of OCR's investigation to date follows.

*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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## **Background**

The Complainant alleged a disparity in the scheduling of the District's boys' and girls' high school varsity basketball games, in that girls' games are rarely scheduled on Friday nights. Specifically, the Complainant alleged that during the 2022-2023 basketball season, the District's boys' high school basketball team had 24 scheduled games, six of which were on Friday nights, whereas its girls' high school basketball team had 22 scheduled games, one of which was on a Friday night. The Complainant submitted copies of the District's 2022-2023 boys' and girls' high school basketball schedules. The Complainant stated that the disparity in the District's scheduling of boys' and girls' high school varsity basketball games deprives the girls' team of the opportunity to play in front of large Friday evening crowds and the psychological benefits of such an experience. The Complainant further stated that the scheduling disparity also disadvantages the girls' varsity basketball players' personal schedules and their ability to complete homework, as they have a disproportionately higher number of games scheduled on school nights.

OCR examined the District's competitive high school sports schedules for the 2022-2023 school year. The schedules show that the varsity boys' football team played ten regular season games, nine of them on Friday nights and one on Saturday night. The junior varsity (JV) football games were all on Saturday mornings, and the freshman boys' football team played primarily on Mondays through Thursdays (weekdays), although it played one game on Saturday morning. The boys' varsity golf team played mostly in invitationals, classics, and opens, including five competitions on Fridays, two on Saturday, and 12 on weekdays. Of the 17 games the JV boys' golf team played, 12 were on weekdays, one was on Friday, and four were on Saturday. The varsity girls' golf team played in 20 events (excluding post-season tournaments), mostly invitationals, three of which were on Friday afternoons and the rest on weekdays. The District did not provide a schedule for a girls' JV golf team and the website indicates that it does not have one. The girls' volleyball team, which is identified on the schedule as JV and varsity collectively, played six regular season games on Saturday morning and 12 games on weekdays. The varsity and JV boys' soccer team played one Friday evening game, six Saturday morning or afternoon games, and 16 weekday games. The varsity and JV girls' soccer team played six Saturday regular season games, including two in the morning, one at 1:00 p.m., one at 5:00 p.m., and one at 7:00 p.m., and 20 weekday games. They did not play any games on Fridays. The varsity and JV girls' tennis team played two invitationals on Saturday, the remainder of the matches on weekdays, and none of the matches on Friday. Of 15 regular season boys' JV and varsity wrestling matches, five occurred on Saturdays, one on Friday, and the remainder on weekdays. The District did not provide the times when most of the wrestling matches occurred, although one of the Saturday matches took place at noon, and one at 9:00 a.m.

With respect to boys' baseball and girls' softball, the varsity boys' baseball team scheduled seven games on Friday, all of which started at 5:00 p.m., six games on Saturday starting at noon, and thirteen games on weekdays. The JV boys' baseball team has seven Friday games on its schedule this year, five Saturday games, and 11 weekday games. The varsity girls' softball played five Friday games, as well as one tournament on Friday and Saturday. It had one additional Saturday game, and 16 weekday games. All of the games on weekdays and Fridays started at 5:00 p.m., and the Saturday game began at 2:00 p.m. The JV girls' softball had the

same number of Friday and Saturday games on the same days, starting two hours earlier than the varsity team, but had two fewer weekday games.

The boys' and girls' bowling, swimming, track, and cross-country teams played or had meets and competitions scheduled on the same days and at the same times.

With respect to basketball, the District's regular-season basketball schedule for the 2022-2023 school year showed that the varsity boys' team had 20 regular season games, including six on Friday nights, four on Saturday, three of which were evening games, one on Sunday night, and nine on weekday nights. The JV boys' basketball team played on the same days as the varsity team, but earlier, and they played one additional weekday game. The JV and varsity girls' basketball team played one Friday afternoon game, eight Saturday games, all but two of which started at 11:30 a.m. or 12:00 p.m., and 11 weekday games. The District did not field a girls' freshman basketball team, but the boys' freshman basketball team played four Friday afternoon games, six Saturday afternoon games, and 11 weekday games.

The District's [redacted content] told OCR that the District had previously been a member of the East Central Ohio League, but in 2018 started affiliating with OVAC, and in 2022 became independent. The [redacted content] explained that OVAC covers a geographic area that stretches into West Virginia and is divided into five divisions. He stated that OVAC does not have a conference schedule, nor does it have conference scheduling requirements. It also does not have a commissioner who schedules games. He stated that it is a loose confederation of schools, most of which are smaller than the District. The [redacted content] told OCR that OVAC has special events, and a member district must play a minimum number of schools in OVAC during a season to qualify to participate in a special event, like a sports tournament. The [redacted content] said that the District is looking for a conference to join because of the difficulty in scheduling games, but there are few schools the size of the District in their geographic region, making it difficult for the District to find a conference to join.

The [redacted content] told OCR that because OVAC is a loose grouping of districts he has to schedule every game for every sport. He said that he considers several factors when scheduling these games, including, but not limited to, the District's long-term relationships and traditions with certain teams, a team's reputation for sportsmanship, the size and quality of the athletic program and the team, geography (some schools in OVAC are more than two hours away), the flow of the schedule, and the balance of home and away games. He said that he works with athletic directors and coaches from other schools and that the District has contracts with some schools, which he described as either one or two-year agreements. He stated that for the two-year agreements they work out the dates of the games at the front end of the agreement, but there is flux in the schedule and often the dates are verbal agreements and the dates and days of these schedules change. The [redacted content] stated that, since becoming independent, the District more commonly enters one-year contracts, but the District tries to get two-year contracts with opposing teams whenever possible. He stated that, increasingly, the District's sports teams are taking games where they can get them.

With respect to basketball, the [redacted content] said that he begins scheduling games a year in advance of the next year's season. The [redacted content] said that the boys' basketball teams typically have played on Tuesdays and Fridays, and occasionally on Saturdays. The [redacted

content] told OCR that he tries to schedule the girls' games in a similar fashion, keeping their games consistently on the same two nights of the week to maintain a regular schedule, but this is a challenge. He said that if he is scheduling games with teams that are in leagues, they will still follow this pattern, but the District is at the mercy of when other teams can play them. The [redacted content] told OCR that the girls' basketball team played a lot of Saturday games in the 2022-2023 school year, and that both the girls' and boys' teams that play on Saturday prefer earlier games, as do officials. He stated that when boys' and girls' basketball teams play on Saturdays the girls' team plays in the late morning and afternoon, and the boys' teams play on Saturday evening.

With respect to crowd sizes, the [redacted content] said that they get larger crowds for boys' basketball games than girls' basketball games, although he later stated that he did not think there was a difference in the crowds for Saturday games. He stated that he has not noticed a difference in the crowd size for the girls' basketball teams when the games are on weeknights as opposed to Saturdays, and that the crowd consists of parents, grandparents, and a few students. He stated that they get larger crowds when they play a rival team or on "special event" nights.

### **Legal Standard and Analysis**

The Title IX implementing regulation at 34 C.F.R. § 106.31(a) prohibits recipients from, on the basis of sex, excluding a person from participation in, denying the person the benefits of, or subjecting the person to discrimination under any education program or activity operated by the recipient.

Athletics programs are specifically addressed at 34 C.F.R. § 106.41 of the Title IX implementing regulation, which requires a recipient that operates or sponsors interscholastic athletics to provide equal athletic opportunity for members of both sexes. As a means of assessing compliance, OCR follows the Department's Policy Interpretation (Policy Interpretation) issued December 11, 1979, 44 Fed. Reg. 71413 *et seq.*

Pursuant to the Policy Interpretation, OCR examines whether the availability and quality of benefits, opportunities, and treatment provided are equivalent for members of both sexes. There are thirteen major factors listed in the Title IX regulation and the Policy Interpretation that may be investigated by OCR to determine whether equal opportunities are available. OCR has termed these thirteen major factors "program components." They include the scheduling of games and practice time. 34 C.F.R. § 106.41(c)(3). Interscholastic athletics investigations may not be limited to anything less than a program component. For each of the thirteen program components, the Policy Interpretation lists specific factors to be investigated.

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 (such as, for example, baseball vs. softball). In evaluating program components, a disparity is a difference in benefits or services, on the basis of sex, which has a negative impact on athletes of one sex when compared with benefits or services available to athletes of the other sex. As some differences in benefits provided to boys and girls may be the result of nondiscriminatory reasons, such as the unique aspects of a particular sport, making a determination that a disparity exists requires more than simply identifying differences in benefits and services. Where any disparities are noted, OCR

then considers whether the differences are negligible. Where the disparities are not negligible, OCR determines whether they are the result of nondiscriminatory factors.

Finally, OCR determines whether the disparities identified 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.

For the program component of scheduling of games and practice time, 34 C.F.R. § 106.41(c)(3), pursuant to the Policy Interpretation, OCR examines the following five factors in assessing compliance: 1) the number of competitive events per sport; 2) the number and length of practice opportunities; 3) the time of day competitive events are scheduled; 4) the time of day practice opportunities are scheduled; and 5) the opportunities to engage in available pre-season and post-season competition.

An institution is not required to schedule the same number of games or practices for men's and women's teams of the same or similar sport. However, any differences favoring, for example, men's teams, should be offset by differences favoring women's teams in other sports.

The provision of greater access to teams of one sex to premium game times for competition can result in a denial of equal athletic opportunity to athletes of the opposite sex.

Based on evidence OCR has reviewed to date, including the 2022-2023 schedules for the varsity girls' and boys' basketball teams, OCR has a cause for concern that the varsity boys' basketball team plays more games on Friday and Saturday nights, whereas the varsity girls' basketball team plays most of its games on either weeknights or Saturday early afternoons. The evidence also shows that, collectively, boys' sports teams play more Friday and Saturday night games than girls' sports teams. This evidence raises a cause for concern that the District does not provide equal athletic opportunity to members of both sexes with respect to the scheduling of games, as required by the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(3).

Under Section 302 of OCR's CPM, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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. On June 6, 2023, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, 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 **October 31, 2023**. For questions about implementation of the Agreement, please contact David Schwark, who will be overseeing the monitoring and can be reached by telephone at (216) 522-7629 or by e-mail at David.Schwark@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667 or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

Brenda Redmond  
Supervisory Attorney/Team Leader

Enclosure