



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

September 22, 2023

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

Sherrie C. Massey, Esq.  
Peters Kalail & Markakis Co, L.P.A.  
6480 Rockside Woods Boulevard South, Suite 300  
Cleveland, Ohio 44131-2222

Re: OCR Docket No. 15-23-1143

Dear Ms. Massey:

This letter is to notify you of the disposition of the above-referenced complaint filed on December 16, 2022, with the U.S. Department of Education, Office for Civil Rights (OCR), against Springfield Local School District (the District) alleging that the District discriminated against female students on the basis of sex by not providing 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 of Education, the District is subject to this law.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and the District's [redacted content].

### **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, during the 2022-2023 basketball season, the District's boys' high school basketball team had 22 scheduled games, 12 of which were on Friday nights, whereas the girls' high school basketball team had 22 scheduled games, none of which was on a Friday night.

### **Facts**

The District is located near Youngstown, Ohio and is part of the Mahoning Valley Athletic Conference (MVAC). The Conference is split into two divisions, Scarlet and Grey, which act as leagues for their members. The District plays all of the other teams in its division (Scarlet) and completes the rest of its schedule with teams outside of its division, who may or may not be members of the Conference. The District intends to stay in its Conference for at least the next two school years.

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The District asserted that, as a member of the MVAC, it follows the MVAC procedures to schedule games, activities and competitions. The District's [redacted content] told OCR that during the current MVAC season, a particular athletic director from among the division's teams is assigned to develop a master schedule for games among teams in that division for the next school year. For example, during this year's basketball season, one of the athletic directors was tasked with creating the master schedule for basketball games within the division for the next school year. That master schedule always leaves the same slots open for non-division play. Athletic directors schedule non-division play typically two years in advance on an ad hoc basis, reaching out to their peer athletic directors.

The [redacted content] said that for boys' and girls' basketball, he avoids Saturday games because of increased janitorial costs. Ever since [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] 1998, boys have played on Tuesdays and Fridays, while girls have played on Mondays and Thursdays. Games outside of the division likewise take place on these respective days.

OCR examined the District's competitive high school sports schedules for the 2022-2023 school year. The schedules show that the varsity football team played Friday nights for nine out of its twelve games. The girls' volleyball and soccer teams (for which there was no corresponding boys' team) played on weeknights or Saturdays. Many of the varsity girls' softball and boys' baseball games are scheduled for the same day and same time; girls' softball had two games on Friday or Saturday night, and boys' baseball had three games during those slots for the spring 2023 season. Girls' and boys' track meets were scheduled for the same days and times.

With respect to basketball, OCR confirmed after reviewing the District's basketball schedule for the 2022-2023 school year that the varsity boys' team had 23 regular season games, 12 of which were scheduled on a Friday night, one of which was scheduled for Saturday night, and the remaining ten of which were scheduled on Tuesday nights. The varsity girls' basketball team schedule had 25 regular season games and showed no Friday night games, six Saturday games, one of which was scheduled for the evening, and 19 weekday games, split mostly between Mondays and Thursdays. Both the boys' and girls' junior varsity teams were scheduled to play earlier on the same days as the varsity teams. The boys' and girls' freshman basketball teams played exclusively on weeknights or Saturday mornings.

### **Legal Standard**

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.*

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 1979 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 times. 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 makes a determination as to whether those 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.

### **Analysis and Conclusion**

As noted above, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR's CPM, which provides that an allegation under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegation and OCR determines that it is appropriate because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

Based on evidence OCR reviewed to date, including the 2022-2023 schedules for 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, and the varsity girls' basketball team plays all games on weeknights or Saturday afternoons. In the fall, the only team that plays on Friday nights is the football team, and collectively, boys' teams play more Friday and Saturday night games than girls' 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 *Case Processing Manual*, 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 it is appropriate to resolve them because OCR's investigation identified concerns that can be addressed. 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 September 19, 2023, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address 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 December 15, 2023. For questions about implementation of the Agreement, please contact Mr. Jacob Oetama-Paul, who will oversee the monitoring and can be reached by telephone at (202) 987-1845 or by e-mail at [Jacob.Oetama-Paul@ed.gov](mailto:Jacob.Oetama-Paul@ed.gov). If you have questions about this letter, please contact me by telephone at (216) 522-7640 or by e-mail at [Sacara.Miller@ed.gov](mailto:Sacara.Miller@ed.gov).

Sincerely,

Sacara E. Miller  
Team Leader

Enclosure