



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

July 13, 2023

Via e-mail only to: [\[redacted content\]](#)

[redacted content]
Western Hurd, LLP
1300 East 9th Street, Suite 1400
Cleveland, Ohio 44114

Re: OCR Docket No. 15-23-1154

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 Lisbon Exempted Village Schools (the District) alleging that the District was not providing equal athletic opportunity to female student athletes 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.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: 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 District staff. Before the conclusion of OCR's investigation, the District requested to voluntarily resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual. OCR's investigation to date is summarized below.

Facts

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 21 scheduled games, nine of which were on Friday nights.

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Comparatively, the District's girls' high school basketball team had 17 scheduled games, zero of which were on Friday nights.

The District provided its competitive high school sports schedules for the 2022-2023 school year. With respect to basketball, OCR found that the boys' varsity basketball team was scheduled for 21 games, 10 of which were on Friday nights, nine of which were on Tuesday nights, one of which was on a Thursday night, and one of which was on a Saturday afternoon. The girls' varsity basketball team was scheduled for 23 games, zero of which were on Friday nights, six of which were on Monday nights, two of which were on Tuesday nights, two of which were on Wednesday nights, eight of which were on Thursday nights, one of which was on a Saturday morning, and four of which were on Saturday afternoons.

The schedules for the 2022-2023 school year further showed that the varsity boys' football team was scheduled to play 10 games, all of which were on Friday nights and the junior varsity boys' football team was scheduled to play four games, all of which were on Saturday mornings. The varsity girls' volleyball team was scheduled to play 22 games, three of which were on Monday nights, eight of which were on Tuesday nights, four of which were on Wednesday nights, and seven of which were on Thursday nights. The junior varsity girls' volleyball team was scheduled to play six games, two of which were on Wednesday nights, two of which were on Thursday nights, and two of which were on Saturday mornings. The varsity boys' baseball team was scheduled to play 16 games, four of which were on Tuesday nights, one of which was on a Wednesday night, five of which were on Thursday nights, four of which were on Friday nights, and two of which were on Saturday at noon. The varsity girls' softball team was scheduled to play 10 games, one of which was on a Tuesday night, one of which was on a Wednesday night, three of which were on Thursday nights, four of which were on Friday nights, and one of which was on a Saturday at noon. The boys' and girls' varsity cross country teams had nine scheduled meets, five of which were scheduled on Tuesday nights and four of which were on Saturday mornings or afternoons. The co-ed varsity golf team had 17 scheduled meets, three of which were on Mondays, seven of which were on Tuesdays, two of which were on Wednesday nights, and five of which were on Thursdays. The co-ed varsity track team had four meets scheduled, all of which were on Tuesdays.

The District's [redacted content] told OCR that the Eastern Ohio Athletic Conference (EOAC), in which the District participates, uses a template to schedule conference games, which are scheduled on a rotating basis. He stated that, for example, the first opponent the District's girls' volleyball team played during the current school year will be the last opponent the volleyball team will play during the next school year. He stated that the EOAC completes the sports scheduling for conference games one year in advance and that the athletic directors within the EOAC meet on a monthly basis to discuss any scheduling issues, if any arise.

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 girls' basketball team and boys' basketball team, OCR has a cause for concern that the boys' varsity basketball team plays far more games on Friday nights than the girls' varsity basketball team, who plays all of its games on Monday through Thursday nights or Saturday mornings or afternoons. Although the boys' team was scheduled for two fewer games than the girls' team, based on the information to date, this did not offset the disparity in the time/day the events were scheduled. In addition, the varsity boys' baseball team was scheduled to play 16 games, while the varsity girls' softball team was scheduled to play 10 games, raising a cause for concern regarding a disparity in the number of competitive events scheduled for boys' and 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).

Voluntary Resolution and Conclusion

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 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 July 7, 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 December 1, 2023. For questions about implementation of the Agreement, please contact Hanna Klein, who will be overseeing the monitoring. Ms. Klein can be reached by telephone at (216) 522-4973 or by e-

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mail at Hanna.Klein@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