



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]
Weston Hurd, LLP
1300 East 9th Street, Suite 1400
Cleveland, Ohio 44114

Re: OCR Docket No. 15-23-1155

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 Columbiana 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 24 scheduled games, ten of which were on Friday nights.

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Comparatively, the District's girls' high school basketball team had 19 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 to play 22 regular season games, ten of which were on Friday nights, eight of which were on Tuesday nights, three of which were on Thursday nights, and one of which was on a Saturday night. OCR found that the girls' varsity basketball team was scheduled to play 21 regular season games, zero of which were on Friday nights, eight of which were on Monday nights, three of which were on Wednesday nights, seven of which were on Thursday nights, two of which were on Saturday mornings, and one of which was on a Saturday night.

With respect to other sports, the varsity football team was scheduled to play 10 games, all of which were on Friday nights. The boys' varsity wrestling team was scheduled to have 13 meets, two of which were on Friday nights, two of which were on Tuesday nights, four of which were on Wednesday nights, one of which was on a Wednesday afternoon, three of which were on Saturday mornings, and one of which was at an unknown time on a Saturday. The girls' varsity volleyball team was scheduled to play 22 games, zero of which were on Friday nights, one of which was on a Monday night, eight of which were on Tuesday nights, three of which were on Wednesday nights, seven of which were on Thursday nights, and three of which were on Saturday mornings.

The boys' and girls' varsity cross country teams had 15 scheduled meets, six of which were on Tuesday nights, four of which were on Wednesday nights, one of which was on a Thursday night, three of which were on Saturday mornings, and one of which was on a Saturday afternoon. The boys' and girls' swim teams, which competed on the same dates and times, had 12 meets scheduled, five of which were on Friday nights, one of which was on a Monday night, one of which was on a Tuesday night, three of which were on Wednesday nights, and two of which were on Saturday mornings.

The boys' varsity golf team had 22 scheduled meets, three of which were on Friday mornings, three of which were on Monday mornings, three of which were on Monday afternoons, four of which were on Tuesday mornings, three of which were on Tuesday afternoons, two of which were on Thursday mornings, and four of which were on Thursday afternoons. The girls' varsity golf team had 22 meets scheduled, two of which were scheduled on a Friday morning (both were scheduled for August 12, 2022), three of which were on Monday afternoons, three of which were on Tuesday mornings, one of which was on Tuesday afternoon, eight of which were on Wednesday afternoons, two of which were on Thursday mornings, and three of which were on Thursday afternoons.

The boys' varsity soccer team was scheduled to play 15 regular season games, zero of which were on Friday nights, two of which were on Monday nights, two of which were on Tuesday nights, one of which was on a Wednesday night, four of which were on Thursday nights, four of which were on Saturday mornings, and two of which were on Saturday afternoons. The girls' varsity soccer team was scheduled to play 16 regular season games, zero of which were on Friday nights, two of which were on Monday nights, four of which were on Tuesday nights, one of which was on a Wednesday night, five of which were on Thursday nights, two of which were

on Saturday mornings, and two of which were on Saturday afternoons. The boys' varsity baseball team was scheduled to play 27 regular season games, four of which were on Friday nights, six of which were on Monday nights, seven of which were on Wednesday nights, four of which were on Thursday nights, and six of which were on Saturday afternoons (including one doubleheader). The girls' varsity softball team was scheduled to play 23 regular season games, two of which were on Friday nights, four of which were on Monday nights, two of which were on Tuesday nights, six of which were on Wednesday nights, four of which were on Thursday nights, one of which was on a Saturday morning, and four of which were on Saturday afternoons (including one doubleheader). The softball schedule indicated that the girls were scheduled to play an additional four games "at Pigeon Forge."

The District's [redacted content] told OCR that she schedules conference games for the Eastern Ohio Athletic Conference (EOAC), in which the District participates. The [redacted content] stated that when the EOAC was initially established, all of the athletic directors in the conference worked together to create the initial schedule for conference games. She stated that since taking on the role of scheduling conference games for the EOAC in all sports, she creates schedules by reversing the order of games from the prior year's schedule and switching home and away games from the prior year's schedule. The [redacted content] stated that the football schedule operates on a two-year rotation, but all other schedules are created annually.

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' and boys' basketball teams, 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, which had no Friday night games and only one Saturday night game. Thus, the disparity for the girls' basketball team is not offset by more favorable primetime scheduling for other 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).

Additional Issue Identified During Investigation

The thirteen program components listed in the Title IX regulation and the 1979 Policy Interpretation, which may be investigated by OCR to determine whether equal opportunities are available, include travel and per diem allowance. Compliance in this area is assessed across a school district's athletic program by examining, among other factors, the equivalence for men and women of: (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. While not part of OCR's investigation to date in this case, OCR notes that the 2022-2023 girls' softball team's schedule indicated that the team was given a travel opportunity to play four games "at Pigeon Forge." Publicly available information indicated this had also occurred during the 2021-2022 season. Conversely, the 2022-2023 boys' baseball team's schedule did not indicate any travel opportunities. Thus, OCR cautions the District to ensure equal athletic

opportunity for members of both sexes in its interscholastic athletic program with respect to travel and per diem allowance. Please do not hesitate to contact OCR for further technical assistance on this topic.

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 12, 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-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