



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION XV  
MICHIGAN  
OHIO

July 20, 2023

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

Emily Spivack, Esq.  
Squire, Patton, Boggs  
1000 Key Tower  
127 Public Square  
Cleveland, Ohio 44114

Re: OCR Docket No. 15-23-1157

Dear Emily Spivack:

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 Zanesville City School District (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

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boys' high school basketball team had 22 scheduled games, seven of which were on Friday nights. Comparatively, the District's girls' high school basketball team had 22 scheduled games, three 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 regular season games, one mid-season tournament, and four pre-season scrimmages. The boys' varsity team was scheduled to play seven games on Friday nights, four games on Saturday nights, seven games on Tuesday nights, and three games on Wednesday nights. OCR found that the girls' varsity basketball team was scheduled for 22 regular season games and three pre-season scrimmages. The girls' varsity team was scheduled to play three games on Friday nights, three games on Saturday afternoon, one game on Saturday night, five games on Monday nights, five games on Tuesday nights, four games on Wednesday nights, and one game on Thursday night.

With respect to other sports, OCR found that the varsity boys' football team was scheduled to play exclusively on Friday nights for all ten of its regular season games. The girls' varsity volleyball team was scheduled to play in one pre-season scrimmage, and one tournament, both of which were scheduled for Wednesday nights. The girls' varsity volleyball team was scheduled to play 21 regular season games, of which zero were scheduled for Friday, two were scheduled for Saturday mornings, four were scheduled for Monday nights, seven were scheduled for Tuesday nights, and eight were scheduled for Thursday nights.

The boys' varsity track team was scheduled for 12 meets. Of those meets, three were scheduled for Friday afternoons, two were scheduled for Saturday mornings, one was scheduled for Saturday afternoon, four were scheduled for Tuesday nights, one was scheduled for Wednesday night, and one was scheduled for Thursday night. The girls' varsity track team was scheduled for 12 meets, of which three were scheduled for Friday nights, three of which were scheduled for Saturday mornings, four were scheduled for Tuesday nights, one was scheduled for Wednesday night, and one was scheduled for Thursday night.

The boys' varsity baseball team was scheduled for one pre-season scrimmage and 26 regular season games. Of those, the boys were scheduled for five games on Friday nights, three games Saturday mornings, two games on Saturday afternoons, six games on Monday nights, four games on Tuesday nights, four games on Wednesday nights, and one game on Thursday night. The girls' varsity softball team was scheduled to play no pre-season scrimmages and 27 regular season games. Of those scheduled regular season games, the girls' varsity softball team was scheduled to play five games on Friday nights, two games on Saturday mornings, three games on Saturday afternoons, six games on Monday nights, two games on Tuesday nights, six games on Wednesday nights, and three games on Thursday nights.

The girls' varsity tennis season ran from August 1, 2022, through November 15, 2022, and the team was scheduled for 21 regular season games and one tournament. Of the regular season scheduled games, the girls' varsity tennis team was scheduled to play zero Friday games, five Saturday morning games starting at 10 a.m., two games on Monday nights, four games on Tuesday nights, seven games on Wednesday nights, and three games on Thursday nights. The boys' varsity tennis season ran from March 1, 2023, through May 20, 2023. The boys' varsity

tennis team was scheduled to play 21 regular season games and zero tournaments. Of the regular season games, the boys' varsity tennis team was scheduled to play one game on Friday night, four games on Saturday mornings, five games on Monday nights, four games on Tuesday nights, two games on Wednesday nights, and five games on Thursday nights.

The District's [redacted content] told OCR that since the District joined the Licking County League three years ago, league games for both boys' and girls' basketball have been scheduled by a league assignor (the league assignor). The [redacted content] stated that the league assignor is not associated with any specific school district and is jointly paid by the school districts in the Licking County League. The [redacted content] stated that the league games are scheduled annually, though at times he will get a "sneak peek" at a tentative schedule two years in advance. The [redacted content] stated that for non-league games he tries to secure two-year contracts with schools.

The [redacted content] stated that the league assignor schedules basketball league games using a "flip-flop season." For the first half of season, girls play Tuesday and Friday nights; for the second half, they play Wednesday and Saturday nights. The [redacted content] stated that the boys' basketball team plays the first half of the season on Wednesdays and Saturdays and the second half on Tuesdays and Fridays. However, based on OCR's review of the District basketball schedules, this would imply that the boys' and girls' teams would have the same number of Friday night games, which as discussed above, they do not; the boys' team had seven Friday night games while the girls' team had three. Of the boys' seven Friday night games, five were league games. Of the girls' three Friday night games, all three were league games.

### **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 afternoons. In addition, although the two teams were scheduled for the same number of competitive events, the boys were scheduled for one more pre-season event than the girls.

In reviewing the competitive schedules for the District's 2022-2023 sports teams, the evidence showed that for track meets the girls' team was scheduled for three Friday nights while the boys' team was not scheduled for any Friday nights. For tennis, the girls' team was not scheduled for any Friday nights while the boys' team was scheduled for one Friday night. The girls' varsity tennis team was scheduled for 22 regular season competitive events, while the boys' varsity tennis team was scheduled for only 21 regular season competitive events. The boys' varsity baseball team was scheduled for one pre-season event while the girls' varsity softball event was not scheduled for any pre-season events. However, the baseball team was scheduled for 26 regular season competitive events compared to 27 for the softball team. Overall, some of these differences favored girls' teams and some boys' teams and the evidence to date indicated these

may have offset one another, but did not offset the more significant disparity in access to Friday and Saturday night games for the girls' basketball team compared to the boys' basketball team. 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 19, 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](mailto: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](mailto:Brenda.Redmond@ed.gov).

Sincerely,

Brenda Redmond  
Supervisory Attorney/Team Leader

Enclosure