



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

May 18, 2023

Via e-mail only to: [redacted content]

[redacted content]
Pepple & Waggoner, Ltd.
5005 Rockside Road, Ste. 260
Cleveland, Ohio 44131

Re: OCR Docket No. 15-23-1178

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 St. Clairsville-Richfield 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 and signed a resolution agreement to address the compliance concerns OCR identified. 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 District is located in southeastern Ohio. The District is a member of the Ohio Valley Athletic Conference (OVAC) and the Buckeye 8 division. It is part of the southern division of the Buckeye 8, along with Bellaire, Martins Ferry, Union Local, and Cambridge. The northern division includes East Liverpool, Beaver Local, Edison, Indian Creek, and Harrison Central.

The complaint alleged a disparity in the scheduling of the District's boys' and girls' high school varsity basketball games, in that girls' games are never scheduled on Friday nights. Specifically, the complaint alleged that during the 2022-2023 basketball season, the District's 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, none of which were on Friday nights.

After reviewing the basketball schedules for the 2022-2023 school year provided by the District in its response to OCR, OCR confirmed that the boys' varsity basketball team was scheduled for 22 games, seven of which were on Friday nights, 13 on Tuesday nights and two on Saturday afternoon. The girls' varsity basketball team was scheduled for 22 games, none of which were on Friday nights, nine on Monday nights, two on Wednesday nights, nine on Thursday nights and two on Saturday afternoon.

The District's [redacted content] [redacted content] [redacted content] told OCR that the Buckeye 8 sends out a master schedule for each sport. To [redacted content] [redacted content] knowledge, the [redacted content] [redacted content] for Harrison school district prepares the master schedules. The District's [redacted content] further told OCR that the schedules for non-conference games are done on a sport-by-sport basis. [redacted content] [redacted content] asks the head coaches for their input. Other factors include: the team's competitiveness; use of facilities, as the District has only one gymnasium and one athletics field; a general lack of officials, umpires, and referees; and a lack of available transportation.

[redacted content] [redacted content] stated that the conference games for the boys' varsity team are generally scheduled on Tuesdays and Fridays. [redacted content] said that conference games for the girls' varsity team are on Mondays and Thursdays. [redacted content] stated that [redacted content] can schedule games against teams that are not in the conference on any day of the week, but [redacted content] takes into account when the other team is playing due to gymnasium access, and [redacted content] also tries not to schedule games on the same nights as other high school athletic competitions to avoid splitting the crowds.

[redacted content] [redacted content] explained that they sell tickets for all home basketball games and that attendance for both boys' and girls' basketball games varies widely based on the opponent, and how well the team is doing that season; however, [redacted content] [redacted content] told OCR that the crowds were larger for boys' games compared to the girls' games. [redacted content] said that the day of the week and the time of day of the games does not seem to be a factor in the size of the crowd.

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 either weeknights or Saturday afternoons. 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 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 May 15, 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 **January 5, 2024**. For questions about implementation of the Agreement, please contact Vincent Cheverine, who will be overseeing the monitoring and can be reached by telephone at (216) 522-2676 or by e-mail at

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Vincent.Cheverine@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2672 or by e-mail at Nathaniel.McDonald@ed.gov.

Sincerely,

Nathaniel McDonald
Supervisory Attorney/Team Leader

Enclosure