



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

September 29, 2023

Via e-mail only to: [redacted content]

Kathy Perrico, Esq.
Weston Hurd, LLP
1300 East 9th Street, Suite 1400
Cleveland, Ohio 44114

Re: OCR Docket No. 15-23-1179

Dear Kathy Perrico:

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 Canfield Local 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 boys' high school basketball team had 22 scheduled games, 11 of which were on Friday night.

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Comparatively, the District’s girls’ high school basketball team had 22 scheduled games, one of which was on Friday night.

OCR examined the District’s 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 game of which there were: 11 on Friday night; nine on school nights (Monday-Thursday); and one on Saturday night. OCR found that the girls’ varsity basketball team was scheduled to play 23 regular season games of which there were two on Friday night, one on Friday afternoon, 11 on school nights (Monday-Thursday), two on Saturday afternoon, six on Saturday night, and one on Sunday afternoon.

With respect to other sports, the boys’ varsity football team plays almost exclusively on Friday nights, with the exception of one Thursday night game. The boys’ varsity wrestling team was scheduled to have 16 meets, of which there were five weekday morning meets; 10 school night meets (Monday – Thursday), and six Saturday weekday morning meets.¹ The District’s [redacted content] noted that the District did not have a girls wrestling team due to lack of interest. The girls’ varsity volleyball team was scheduled to played primarily weekday night games with six combined Saturday morning and Saturday afternoon games. The boys’ and girls’ varsity cross country teams had the same schedule, with six meets on weekday nights and eight combined Saturday morning and Saturday afternoon meets. The boys’ and girls’ swim teams, which competed on the same dates and times, had 14 meets scheduled of which two were on Friday night, seven were on school nights, and there were five combined Saturday morning Saturday afternoon meets. Boys’ and girls’ varsity golf, varsity soccer, varsity tennis, and varsity track teams had similar weekday and weekend schedules. Boys’ varsity baseball and girls’ varsity softball also had similar weekday and weekend schedules, as did boys’ and girls’ varsity lacrosse. Finally, the bowling team was co-ed and was scheduled to compete in 16 meets of which zero were on Friday nights, 11 were on school nights, and five were on Saturday afternoons.

The District’s [redacted content] told OCR that the District is part of the All-American Conference, which is a small conference that only includes four other schools. The [redacted content] stated that the District intended to stay in the conference for the foreseeable future. [redacted content] stated that the conference sets schedules about one to two years in advance. For example, they will begin scheduling the 2024-2025 schedule at the beginning of the 2023-2024 season.

The [redacted content] stated that all conference athletic directors meet monthly to discuss any scheduling issues, but there are rarely in-conference conflicts and those can usually be worked out. [redacted content] stated that the conference divides the sports for in-conference scheduling amongst the various athletic directors within the conference. For example, the [redacted content]. [redacted sentence]. [redacted content] stated that an athletic director from another district in the conference schedules boys’ and girls’ basketball in-conference games. The [redacted content] stated that the boys’ basketball in-conference games are always scheduled for Tuesday and Friday nights, while the girls in-conference games are scheduled for Wednesday nights and Saturdays, both during the day and night. [redacted content] was not sure why the

¹ For purposes of this letter, weekday refers to any game scheduled Monday-Thursday.

conference decided that schedule for boys and girls as it was made prior to [redacted content]. However, [redacted content] believed that the girls previously had been scheduled on Mondays and Thursdays for in-conference play, but starting around 2015-2016, the girls in-conference games switched to the Wednesday/Saturday schedule. When asked why the change occurred, [redacted content] stated [redacted content] believed it was to give the girls an opportunity to play in a more “prime time” slot of Saturday nights. In addition, [redacted content] said that [redacted content] [redacted content] girls always play on Black Friday (the day after Thanksgiving) and the District tries to make it a big event where the boys play first and the girls second.

[redacted content] stated that each athletic director in the conference schedules their own non-conference games. The [redacted content] noted that the District schedules all of its girls’ basketball home games for Saturday night at 7:00pm, but [redacted content] who want the games scheduled either midmorning or in the afternoon on Saturdays because they believe the players would be “fresher” earlier in the day than they would be at night. [redacted content] contrasted this to boys’ Friday night games, where players are in school all day and are somewhat active, and then play Friday night after school. [redacted content] said many non-conference districts still have girls playing on Monday and Thursday and boys seem to play consistently on Tuesdays and Fridays.

When asked about the difference in attendance at Saturday afternoon games versus Saturday night games, the [redacted content] stated that the 7:00pm game draws a bigger crowd, especially with more student attendance. [redacted content] stated that the difference in attendance between boys’ and girls’ games on weekdays and on weekends ranges from 100-200 more in ticket sales. [redacted content] also stated that the boys’ basketball team’s attendance has been higher than the prior year due to their successful record during the 2022-2023 season.

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 significantly more games (11) on Friday nights than the girls' varsity basketball team, which had no Friday night games and only played Saturday afternoon or night games. Moreover, attendance is higher for boys' basketball team and there is some evidence that a Saturday night game may not be equal to Friday night games as some coaches believe their players will not perform as well on Saturday night game versus a Friday night game after school.

The evidence obtained to date also shows that, in the fall, the only team that plays on Friday nights is the boys' varsity football team. Collectively, boys' sports teams play significantly more Friday night games than girls' sports teams. 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).

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 September 29, 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 Alysa Kociuruba, who will be overseeing the monitoring. Ms. Kociuruba can be reached by telephone at (202) 987-1837 or by e-mail at Alysa.Kociuruba@ed.gov. If you have questions about this letter, please contact me by telephone at (202) 987-1838 or by e-mail at Denise.C.Vaughn@ed.gov.

Sincerely,

Denise C. Vaughn
Team Leader

Enclosure