



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

June 7, 2023

Via e-mail only to: [deleted content]

[deleted content]
Superintendent
Conotton Valley Union Local School District
7205 Cumberland Road, SW
Bowerston, Ohio 44695

Re: OCR Docket No. 15-23-1191

Dear Superintendent [deleted content]:

This letter is to notify you of the disposition of the above-referenced complaint filed on [deleted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Conotton Valley Union Local 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 Harrison County Ohio, approximately 100 miles south of Cleveland and 120 miles east of Columbus. It is in the Inter Valley Athletic Conference (IVC) with fourteen other school districts and the Ohio Valley Athletic Conference (OVAC) with approximately 50 other school districts.

The Complainant alleged that the District discriminates against female students on the basis of sex because the District does not provide equal athletic opportunity to female students with respect to the scheduling of high school basketball games. The Complainant stated that the disparity in the District's scheduling of boys' and girls' high school varsity basketball games deprives the girls' team of the opportunity to play in front of large Friday evening crowds and the psychological benefits of such an experience. Further, that the scheduling disparity also disadvantages the girls' varsity basketball players' personal schedules and their ability to complete homework, as they have a disproportionately higher number of games scheduled on school nights.

OCR examined the District's competitive high school sports schedules for the 2022-2023 school year. The schedules show that the varsity boys' football team played on Friday nights, except for two Saturday games. The girls' volleyball team played exclusively on weeknights during the regular season. Most of the varsity girls' softball games are scheduled for weeknights, with less than five weekend games. The boys' baseball games are scheduled for mostly weeknights, with only six weekend games. Girls' and boys' cross country, golf, track, and bowling matches were scheduled for the same days and times.

The varsity boys' basketball team had 18 regular season games; 8 were on Friday night, 1 was on a Saturday, and 9 were on Tuesday night. The varsity girls' basketball team schedule showed 7 Saturday games and 12 weekday games, primarily on Wednesdays. The District did not have a girls' junior varsity basketball team this year since only 7 girls played basketball, but the schedule showed both the boys' and girls' junior varsity teams scheduled to play on the same days, primarily weekdays. The District did not field a girls' or boys' freshman basketball team.

The District's [deleted content] told OCR that the IVC conference assigns games and then he works to schedule 5 OVAC games with other athletic directors in that conference. The [deleted content] said that the IVC provides the basketball schedule two years in advance, and that games are assigned in a Wednesday through Saturday rotation. For OVAC games, the [deleted content] has requested Saturday night games for the girls' basketball team, so as not to conflict with other sports the girls may play, but has had difficulty getting other schools to agree.

The District provided specific ticket sales for some of the District's competitive basketball games for the 2022-2023 season. For the girls, the attendance numbers were 64 (November 30, 2022, a Wednesday) and 108 (December 17, 2022, a Saturday). For the boys, the attendance numbers were 170 (December 16, 2022, a Friday) and 89 (December 27, 2022, a Tuesday).

The [deleted content] told OCR that he has taken steps to improve equity between the girls' and boys' basketball teams. For example, for the 2022-2023 school year he had the coaches rotate

practice times and gyms for both teams, and had the pep band attend 6 girls' and 6 boys' basketball 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.

The information obtained during the investigation to date shows 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 weeknights, with a few Saturday games. The information showed that crowds are consistently larger at boys' basketball games than girls' basketball games. The evidence also shows that, in the fall, the only team that played on Friday nights was the boys' football team, and that, collectively, boys' sports teams play more Friday and Saturday 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.

Based on this information, OCR has 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).

As noted above, 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 10, 2023, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the complaint allegation. 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 **July 17, 2023**. For questions about implementation of the Agreement, please contact Allison Hite, who will be overseeing the monitoring and can be reached by telephone at (202) 987-1296 or by e-mail at

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Allison.Hite@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,

for Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure