



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

July 27, 2023

Via e-mail only to [redacted content]

[redacted content]
Scott Scriven LLP
250 East Broad Street, Suite 900
Columbus, Ohio 43215

Re: OCR Docket No. 15-23-1194

Dear Attorney [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 the Gallia County Local School District (the District) alleging that the District discriminated against female students on the basis of sex by not providing 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 of Education, the District is subject to this law.

Based on the complaint allegation, OCR investigated the following 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, an additional witness, and District staff. Prior to the 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 Gallia County, which is in southern Ohio, and is a member of the Tri-Valley Conference.¹ The Tri-Valley Conference is divided into two divisions, the Ohio Division and the Hocking Division. The District competes in the Hocking Division of the conference. The Hocking Division is composed of the following other school districts: Eastern Local School District, Trimble Local School District, Federal-Hocking Local School District, Wolf Creek Local School District, Southern Local School District, and Belpre Local School District.

The District educates students from preschool through grade 12 at seven schools, including two high schools—South Gallia Middle-High School (South Gallia) and River Valley High School (River Valley). Each of the high schools has its own athletic director (AD) and fields its own teams. With the exception of golf and swimming—which were offered exclusively at River Valley during the 2022-2023 school year—both high schools offer the same sports. For girls, those sports include basketball, cross country, golf, softball, swimming, track, volleyball, and wrestling. For boys, those sports include baseball, basketball, cross country, football, golf, swimming, track, and wrestling.

The complaint alleged a disparity in the scheduling of the District's boys' and girls' high school varsity basketball games because the girls' games are rarely scheduled on Friday nights. Specifically, the complaint alleged that, during the 2022-2023 basketball season, the District's boys' high school basketball team had 21 scheduled games, nine of which were on Friday nights. Comparatively, the District's girls' high school basketball team had 21 scheduled games, one of which was on a Friday night.

Facts

During the investigation, OCR examined the information that the District provided regarding practice schedules and athletic competition schedules for the 2022-2023 school year.

With respect to practice schedules, practice dates, times, and locations are scheduled by each coach and approved by the AD. With the exception of basketball and wrestling, almost every team practices immediately, or shortly after, the school day ends. With respect to basketball, the girls' basketball teams start several weeks before the boys' season, so the girls' teams are given practice priority during that time. Once the boys' basketball teams start, the teams switch practice times at the discretion of the coaches and players on each team. With respect to wrestling, the River Valley boys' and girls' teams practice separately alternating each week between a 3:00p.m., start time and a 5:00p.m., start time. The South Gallia boys' and girls' wrestling teams practice together.

With respect to pre-season and post-season participation, the District asserted that pre-season competitions are scheduled by either of the athletic directors or the team's coach and do not typically involve schools within Tri-Valley. All post-season competitions are scheduled by the

¹ Starting with the 2023-2024 school year, one of the District's two high schools – the South Gallia Middle-High School, will join the Southern Ohio Conference. The other District high school, River Valley High School, will remain in the Tri-Valley Conference.

Ohio High School Athletic Association, which the District asserted it does not have discretion over.

With respect to competition schedules, the South Gallia and River Valley boys' and girls' cross country and track teams compete in the same events. The River Valley boys' and girls' wrestling teams also compete in the same events. While not conclusive from the data, it appears that the River Valley boys' and girls' swimming teams also compete in the same events.

Most of the South Gallia girls' softball and boys' baseball games were scheduled for the same day and time, and there was no disparity in the number of Friday night games each team played. The River Valley girls' softball team played four more Saturday games and five more total games than the boys' baseball team. The AD did not know the reason for the difference in scheduling but suggested that it might be because a number of baseball games were rainouts.

The South Gallia and River Valley girls' volleyball teams played almost exclusively on weeknights, with no Friday games. The [redacted content] stated that the coaches and players prefer playing during the week and do not want to play Saturday games. The South Gallia and River Valley boys' football teams both played exclusively on Friday nights. The River Valley girls' golf team participated in three more events than the boys' golf team. Both teams played exclusively on weeknights, with none of their matches on Friday. The District did not provide any data regarding the competition schedule for the South Gallia wrestling team. However, the [redacted content] stated that, unlike the River Valley wrestling teams, the South Gallia boys' and girls' wrestling teams do not have the same competition schedule.

With respect to basketball, Tri-Valley typically schedules the boys' basketball games on Tuesdays and Fridays. Girls' basketball games are typically played on Mondays and Thursdays. The District does not schedule non-conference games on specific days. Rather, non-conference games are scheduled based on availability.

The South Gallia boys' basketball team played 22 regular season games, eight of which were on Tuesday nights, one of which was on a Wednesday night, one of which was on a Thursday afternoon, nine of which were on Friday nights, and three were on Saturday nights. Every game other than the Thursday afternoon game began at 6:00p.m.

The South Gallia girls' basketball team also played 22 regular season games, none of which were on Friday. Eight were on Monday nights, two were on Wednesday evenings, eight were on Thursday nights, one was on a Thursday afternoon, two were on Saturday afternoons, and one was on a Saturday evening. All of the evening games began at 6:00p.m.

The River Valley boys' basketball team played 22 regular season games, eleven of which were on Tuesday nights, nine of which were on Friday nights, and two were on Saturday nights. All of the games began at 6:00p.m.

The River Valley girls' basketball team played 23 regular season games, one of which was on a Friday evening. Seven were on Monday nights, two were on Tuesday evenings, two were on Wednesday evenings, eight were on Thursday nights, two were on Saturday afternoons. All of the evening games began at 6:00p.m.

The [redacted content] said the attendance at South Gallia boys' basketball games for a weekday is about 100 to 120 people. The girls usually bring in around 125 to 175 people. However, this number can change based on whether the opponent is a rival or is situated in close proximity to the District. Attendance for a Friday game is one to one and a half times larger for boys' basketball. The [redacted content] stated there is no difference in attendance for girls' basketball that are played on Friday evenings. Saturday brings in more people regardless of whether it is a boys' or girls' game and regardless of the time. The [redacted content] estimated that both teams bring in between 50 to 100 more spectators on Saturdays. These numbers could be larger depending on the rival team. While the [redacted content] was not certain, [redacted content] presumed the above numbers are the same for River Valley basketball games.

In terms of offsets to the alleged inequity in Friday night basketball scheduling, the [redacted content] stated that the South Gallia girls' basketball team will play at least five Saturday games during the 2023-2024 school year as opposed to the boys' basketball team who will play two games on Saturday. The girls' basketball team will also play another game on a Friday or Saturday depending on scheduling, which has not been determined. The boys will still play 11 Friday games during the 2023-2024 school year.

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 the evidence that OCR 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 played more games on Friday nights and that the varsity girls' basketball team played most of its games on weeknights. The evidence also shows that, in the fall, the only teams that played on Friday nights were the South Gallia and River Valley boys' football 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).

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 26, 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 Patrick Vrobel or Aleksandra Chojnacki, who will oversee the monitoring. Mr. Vrobel can be reached by telephone at (202) 987-1841 or by e-mail at Patrick.Vrobel@ed.gov. Ms. Chojnacki can be reached at (202) 987-1843 or by e-mail at Aleksandra.Chojnacki@ed.gov. If you have any questions about this letter, you may contact me at (216) 522-2672 or Nathaniel.McDonald@ed.gov.

Sincerely,

Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure