



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION XV  
MICHIGAN  
OHIO

July 14, 2023

**Via e-mail only to [redacted content]**

Lisa Woloszynek  
Weston Hurd, LLP  
1300 East 9<sup>th</sup> Street, Suite 1400  
Cleveland, Ohio 44114

Re: OCR Docket No. 15-23-1195

Dear Attorney Woloszynek:

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 Alexander 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.

## **Background**

The District is located in Albany, Ohio, and is a member of the Tri-Valley Conference. The Tri-Valley Conference is divided into two divisions, the Ohio Division and the Hocking Division. The District competes in the Ohio Division of the conference. The Ohio Division is composed of the following school districts: Athens City School District, Nelsonville-York City School District, Wellston City School District, River Valley Local School District, Vinton County Local School District, and Meigs Local School District.

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, the District provided information that practices for boys' and girls' teams are typically scheduled directly after school for similar lengths of time. The exception is the golf team where players on both the varsity girls' golf team and varsity boys' golf team practiced on their own time because golf players generally compete in other sports. The players worked with their coaches to find a time when they could get practice shots in. With respect to competition schedules, the cross-country and track teams played the same schedule.

Most of the varsity 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 softball team played one more Friday evening game. The varsity baseball team played three Saturday afternoon games while the softball team did not play any. The [redacted content] stated that the difference in Saturday games was driven by the preference of the opposing teams and that, in general, neither team wants to play Saturday games because of pitch count limitations

Both the varsity girls' and boys' golf teams played eleven matches. The girls' varsity golf team played exclusively on weekday afternoons. The varsity boys' golf team generally played on Thursday afternoons, with two matches on Friday morning and two matches on Saturday. The [redacted content] stated that the boys' golf team played more Saturday matches because there are more girls' golf teams in the Tri-Valley Conference, so the girls' golf team has more conference games on its schedule. Because there were less conference games for the boys' golf team, the [redacted content] requested that the [redacted content] schedule invitationals, which are typically played on Fridays and Saturdays. The girls' [redacted content] did not request that the [redacted content] schedule any invitationals for the 2022-2023 school year.

Both the boys' varsity soccer team and girls' varsity soccer team played 18 games, predominately on weekday evenings. The girls' varsity soccer team played three more Saturday

afternoon games than the boys' varsity soccer team. The [redacted content] stated that the Saturday games are not preferred in soccer because the students of both teams want the weekend off. [redacted content] stated that [redacted content] scheduled more Saturday games for the girls' varsity soccer team because there are more boys' soccer teams in close proximity to the District. As a result, the girls' soccer team had substantially longer travel times—in some cases an hour and a half each way. The [redacted content] did not want the girls' soccer team returning to school in the late evening on school nights for academic reasons, so [redacted content] scheduled more Saturday games for the girls.

The girls' varsity wrestling team competed almost exclusively in tournaments that were scheduled for the weekend. The [redacted content] explained that girls' wrestling became an Ohio High School Athletic Association sponsored sport during the 2022-2023 school year and, as a result, there are a limited number of participants. Because of the lack of teams and limited number of participants, the District scheduled girls' wrestling for weekend tournaments compared to dual meets, to ensure the female wrestlers had the opportunity to compete. The [redacted content] hopes that girls' wrestling grows as a sport so that the District can schedule more dual meets for the girls' wrestling team

The varsity girls' volleyball team played almost exclusively on weeknights, with four Saturday games. The varsity boys' football team played exclusively on Friday nights. With respect to basketball, the boys' varsity basketball team played 23 regular season games, 12 of which were on Tuesday nights, nine were on Friday nights, and two were on Saturday nights. Almost all of the games began at 7:00p.m.

The girls' varsity basketball team also played 23 regular season games, one of which was on a Friday night. Eight were on Monday nights, one was on a Wednesday afternoon, seven were on Thursday nights, three were on Saturday afternoons, and one was on a Saturday evening. All evening games began at 6:30p.m. or 7:00p.m.

The Monday and Thursday games were the conference schedule for girls' varsity basketball. The Tuesday and Friday games were the conference games for boys' varsity basketball. The timing of the Saturday games were determined by the individual coaches because they are not conference games.

The [redacted content] said the attendance for a weeknight game for a boys' basketball game is 200 to 300 individuals. However, the attendance can increase up to 500 people if the boys' basketball team plays a rival. The [redacted content] said that attendance did not change on Friday games for boys' basketball, with the exception of rivalry games. The girls' varsity basketball team averaged fewer, regardless of when the game was played. For instance, the attendance did not change for the Friday game that the girls' varsity basketball team played during the 2022-2023 school year.

The attendance decreased for Saturday games for both teams, regardless of whether the game was in the afternoon or evening. The [redacted content] attributed this to the fact that students do not receive reminders on the weekends to attend these games but receive regular reminders during the school week.

## **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 team that played on Friday nights is the boys' football 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).

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 June 9, 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, who will oversee the monitoring and can be reached by telephone at (202) 987-1841 or by e-mail at

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Patrick.Vrobel@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