



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

June 21, 2023

Via e-mail only to: [redacted content]

Robert Morton
Superintendent
801 South Clinton Street
Defiance, Ohio 43512

Re: OCR Docket No. 15-23-1197

Dear Mr. Morton:

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 Defiance City Schools (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 Defiance, Ohio and is a member of the Western Buckeye League for interscholastic high school athletics including the following league schools: Bath, Celina, Elida, Kenton, Ottawa-Glandorf, St. Mary, Shawnee, Lima, Van Wert, and Wapakoneta. 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 nights, whereas the District's girls' high school basketball team had 22 scheduled games, none of which were on a Friday night. The Complainant submitted copies of the District's boys' and girls' high school basketball schedules for the 2022-2023 school year. 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. The Complainant further stated 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.

Facts

During the investigation, OCR examined the information that the District provided regarding practice schedules, pre-season and post-season participation, and athletic competition schedules for the 2022-2023 school year. In addition, OCR spoke with the District's [redacted content] [redacted content] and 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 exclusively on Friday nights. The boys' and girls' golf teams both played most of their games on weeknights. The boys' and girls' soccer teams both played on a similar schedule on weeknights and weekends. The girls' volleyball team played on weeknights or Saturday mornings. Many of the varsity girls' softball and boys' baseball games are scheduled for the same day and time, although there is a slight disparity in the number of Friday games each team played for the spring 2023 season as the baseball team played more games than the softball team. Girls' and boys' tennis teams played on a similar schedule. Girls' and boys' cross country, track and field, bowling, and swimming meets were either held or have been scheduled for the same days and times.

With respect to basketball, after reviewing the District's basketball schedule for the 2022-2023 school year, OCR confirmed that the varsity boys' team had 24 regular season games, 12 of which were scheduled on a Friday night, nine of which were scheduled for Saturday night, two on Thursday night, and one on Tuesday night. The varsity girls' basketball team schedule showed no Friday night games, ten Thursday evening games, three Saturday games and two Monday games. Two of the Saturday games were in afternoon, and one was in the evening. Both the boys' and girls' junior varsity teams were scheduled to play earlier on the same days as the varsity teams. The District did not field a girls' freshman basketball team, but the boys'

freshman basketball team played at the earliest time slots on the same days the boys' junior varsity and varsity teams played.

The District's [redacted content] [redacted content] told OCR that the Western Buckeye League commissioner completes the sports scheduling, by season, two years in advance. He said that the commissioner compiles a composite schedule for conference team games, and the athletic director places those days on his teams' schedule. The [redacted content] [redacted content] told OCR that the basketball schedule is determined at least two years in advance. He stated that, as with the other sports, the conference commissioner provides a draft of the master schedule for conference basketball games. The [redacted content] [redacted content] said that he completely adopts the schedule the commissioner sets for the conference games. With respect to the scheduling of non-league games, the [redacted content] [redacted content] said that he and the respective school's [redacted content] [redacted content] set those schedules. He added that non-league games are played on corresponding dates from year to year, meaning the same teams would play at the same time in the corresponding year unless a conflict arises. The [redacted content] [redacted content] added that the basketball teams never play games on Wednesday nights.

The [redacted content] [redacted content] told OCR that the conference league commissioner sets both the boys' and girls' conference basketball games. He said that as a matter of tradition, varsity boys' team games are set on Friday nights from December through February. He said that this has been the established practice of the conference since 1977. The [redacted content] [redacted content] stated that the conference sets varsity girls' team games for Thursday nights, playing the same school that the boys' team plays on Friday night. He added that non-league games are scheduled for both teams during a weeknight or Saturday depending on the other team's availability and adheres to a corresponding scheduling of teams from year to year.

With respect to attendance and crowds, the [redacted content] [redacted content] told OCR that there are typically about 1,500 tickets sold for varsity boys' team games. In contrast, the [redacted content] [redacted content] said that no matter when the varsity girls' games are played, there are typically approximately 90 spectators.

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 varsity girls’ and boys’ basketball teams, OCR has a cause for concern 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, predominately Thursday nights. The varsity girls did not play any Friday night games during the 2022-2023 season, while the boys played 20 games on a Friday or Saturday night. Moreover, the [redacted content] [redacted content] told OCR that the crowds are overwhelmingly larger during the Friday evening varsity boys’ team games, during which 1,500 spectators attend, compared to about 90 spectators who attend the varsity girls’ team games on Thursday evenings. The evidence also shows that in the fall the only team that plays on Friday nights is the boys’ football team, and that, collectively, boys’ sports teams play more Friday and Saturday 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' sports 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 June 16, 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 **August 18, 2023**. For questions about implementation of the Agreement, please contact Robert Lampley, who will be overseeing the monitoring and can be reached by telephone at (202) 987-1833 or by e-mail at Robert.Lampley@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
Supervisory Attorney/Team Leader

Enclosure