



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION XV  
MICHIGAN  
OHIO

June 28, 2023

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

Susan L. Oppenheimer, Esq.  
Bricker Graydon  
100 South Third Street  
Columbus, Ohio 43215

Re: OCR Docket No. 15-23-1198

Dear Ms. Oppenheimer:

This letter is to notify you of the disposition of the above-referenced complaint filed on January 5, 2023, with the U.S. Department of Education, Office for Civil Rights (OCR), against Oak Hill Union Local City School District (the District) alleging that the District discriminated against female students 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 of Education, the District is subject to this law. 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. OCR also 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 and Summary of Investigation**

The District competes in Division 2 of the Southern Ohio Conference, which includes other schools such as Waverly, Portsmouth West, Wheelersburg, Minford, Valley, South Webster, Eastern Pike, and Northwest for interscholastic high school athletics.

The Complainant alleged a disparity in the scheduling of the District's boys' and girls' high school varsity basketball games, in that girls' games were much less often scheduled on Friday nights. Specifically, the Complainant alleged that during the 2022-2023 basketball season the District's boys' high school basketball team had 21 scheduled games, six of which were on Friday nights, whereas the District's girls' high school basketball team had 20 scheduled games, none of which were on Friday nights.

OCR examined the District's interscholastic basketball schedules for the 2022-2023 school year. The boys' varsity basketball team played a total of 22 regular season games, with 6 games on Friday night, 3 games on Saturday night, 1 game on Saturday afternoon, and the remaining games primarily on Tuesday night, with occasional games scheduled for Wednesday or Thursday night; conference games were predominantly scheduled on Tuesday, Friday, and Saturday. The girls' varsity basketball team played a total of 22 regular season games, with zero games on Friday night, one game played on Saturday afternoon, and the remaining games on Monday and Thursday nights, with occasional games on Wednesday; conference games were predominantly scheduled on Monday and Thursday.

According to [redacted], the District has been in the Southern Ohio Conference for about 10 years. Regarding basketball, scheduling for the conference is done by a committee of about 6 persons, comprised of 1-2 athletic directors who volunteer on behalf of each division; [sentence redacted]. This committee utilizes the season start date provided by the Ohio High School Athletic Association (OHSAA) and generates a conference schedule for the next 2-year period. The District is then responsible for scheduling nonconference games as needed around the conference game schedules, which is finalized a year in advance. [Redacted] consults with coaches for recommendations on non-conference opponents, considering competitive level and availability around the established conference schedules.

[Paragraph redacted]

OCR also reviewed the competition schedules for all varsity teams in the District's interscholastic athletic program for the 2022-2023 school year. These showed that the boys' varsity baseball team played a total of 25 games (5 games on Friday nights, 4 games on Saturday morning or afternoon, and the remaining games from Monday through Thursday at night), while the girls' softball team played a total of 23 games (5 games on Friday nights, zero games on Saturday and the remaining games on Monday through Thursday at night). The boys' varsity football team played a total of 12 games (11 games on Friday nights and one game on Saturday night). The girls' varsity volleyball team played a total of 23 games (zero games on Friday nights, one game on Saturday morning and the remaining games mostly played on Monday, Tuesday and Thursday night with occasional games on Wednesday at night). Girls and boys participating on the high school golf, cross country, and track and field teams shared the same competitive schedules.

## **Legal Standard**

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.*

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 1979 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 times. 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 makes a determination as to whether those 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.

### **Analysis, Resolution and Conclusion**

Based on evidence OCR has reviewed to date, including the 2022-2023 schedules for the high school varsity sports teams, OCR has a cause for concern that the boys' varsity basketball team played more games on Friday and Saturday nights, while the girls' varsity basketball team had almost no such opportunities for weekend night games. The boys' varsity baseball team also was scheduled for more weekend game competitions than the girls' varsity softball team, as well as more competitive events overall. This evidence, therefore, raises a cause for concern that the District may not be providing 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 12, 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 Ms. Suwan Park, who will

oversee the monitoring and can be reached by telephone at (216) 522-4972 or by e-mail at Suwan.Park@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-4709 or by e-mail at John.Cohen@ed.gov.

Sincerely,

/s/

John Cohen  
Supervisory Attorney/Team Leader

Enclosure