



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

June 16, 2023

Via e-mail only to [redacted content]

[redacted content]
Superintendent
Eastern Local School District
1170 Tile Mill Road
Beaver, Ohio 45613

Re: OCR Docket No. 15-23-1200

Dear Superintendent [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 Eastern Local School District (the District) alleging that the District discriminated against female students on the basis of 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.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: 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 Beaver, Ohio, and is a member of the Southern Ohio Conference (SOC). The SOC is composed of eighteen school districts including, among others, Clay Local

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School District; Green Local School District; New Boston Local School District; Western Local School District; Valley Local School District; Northwest Local School District; Wheelersburg Local School District; Oakhill Union Local School District; Symmes Valley Local School District; Fayetteville Local School District; Eastern Local School District; and Waverly City School District.

Facts

Conference schedules are made by committees. In general, the SOC schedules girls' basketball and volleyball teams for Mondays and Thursdays. The SOC schedules boys' basketball for Tuesdays and Fridays. Coaches have the discretion to schedule Saturday games, which are not generally conference games.

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. The Complainant believed the disparity deprives the girls' team of the opportunity to play in front of large Friday evening crowds and because the number of games scheduled on school-nights impedes their ability to complete homework.

During the investigation, OCR examined the District's competitive high school sports schedules for the 2022-2023 school year and interviewed [redacted content] regarding schedules and practice times. With the exception of archery and basketball, all of the teams practiced immediately after the end of the school day. With respect to varsity basketball, the teams alternated practice times with one team starting first on one week and then the other team starting first on the alternate week.

The varsity boys' football team played exclusively on Friday nights. The varsity girls' volleyball team played almost exclusively on weeknights with one Saturday morning game. The varsity girls' and boys' golf teams played all of their games on weekdays with one Friday morning match. The varsity girls' and boys' cross-country 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 girls' and boys' track teams played the same schedule, which consisted of weekday meets and one Saturday morning invitational.

With respect to basketball, the boys' varsity basketball team was scheduled for 22 games, eight of which were on Tuesday nights, one was on a Wednesday night, nine were on Friday nights, three were on Saturday nights, and one was on a Saturday morning. All evening games began at 6:00 p.m.

The girls' varsity basketball team was also scheduled for 22 games, none of which were on Friday nights. Nine were on Monday nights, one was on a Tuesday night, three were on Wednesday nights, eight were on Thursday nights, and one was on a Saturday afternoon. All evening games began at 6:00 p.m.

[redacted content] stated that the attendance for a girls' basketball game is around 50 people and that there is no difference in attendance between weekday games and weekend games. The

attendance for a boys' basketball game is 200 to 300 people on a weekday and 300-400 on a weekend.

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 14, 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 **September 30, 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,

for Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure