



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

June 14, 2023

Via e-mail only to [redacted content]

[redacted content]
Bricker Graydon
100 South Third Street
Columbus, Ohio 43215

Re: OCR Docket No. 15-23-1202

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 Southern 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 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 a rural public school district located in Meigs County, which is in southeastern Ohio. The District belongs to the Hocking Division of the Tri-Valley Conference in athletics. The Hocking Division is composed of the following school districts: Gallia County Local School District, Eastern Local School District, Trimble Local School District, Federal-Hocking Local School District, Wolf Creek Local School District, Southern (Meigs County) Local School District, and Belpre 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 22 scheduled games, nine of which were on Friday nights. Comparatively, the District's girls' high school basketball team had 17 scheduled games, one of which was on Friday 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.

With respect to practice schedules, the District provided information that, unless there is a conflict, practices for both boys' and girls' teams are typically scheduled directly after school for similar lengths of time. The exception is the girls' basketball team, which consistently practiced later than the boys' basketball team during the 2022-2023 school year. With respect to pre-season and post-season participation, the District stated that every varsity sport that qualified for post-season play has been able to participate.

With respect to competition schedules, golf, cross country, and track are coed sports in which the girls and boys compete in the same events. 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 varsity girls' volleyball team played exclusively on weeknights, with no Friday evening games. The varsity boys' football team played exclusively on Friday and Saturday nights.

With respect to basketball, the boys' varsity 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 night, seven of which were on Friday nights, and five were on Saturday nights. Almost all of the games began at 6:00p.m.

The girls' varsity basketball team also played 22 regular season games, one of which was on Friday as part of a Thursday/Friday tournament. Five were on Monday nights, one was on a Wednesday evening, nine were on Thursday, two were on Saturday afternoons, and three were on Saturday evenings. All evening games began at 6:00p.m.

[redacted content] stated that conference games for girls' basketball predominantly follow a Monday/Thursday schedule and that conference games for boys' basketball predominantly follow a Tuesday/Friday schedule. Non-conference games are generally scheduled on Saturday. The District scheduled one of the Saturday games during the 2022-2023 school year with the girls' and boys' teams playing back-to-back.

[redacted content] said the attendance for games, including both weekday and weekend games, varies depending on the opponent so he could not estimate the average attendance for a particular day of the week. Moreover, [redacted content] did not think there was a discrepancy in attendance between weekday and weekend games—it varied mostly based on opponent.

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 **November 22, 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 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