



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

July 18, 2023

Via e-mail only to: [redacted content]

Greg Williamson
Superintendent
Leipsic Local School District
232 Oak Street
Leipsic, Ohio 45856

Re: OCR Docket No. 15-23-1205

Dear Superintendent Williamson:

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 Leipsic Local School District (the District) alleging that the District was not providing equal athletic opportunity to female student athletes 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* (CPM). 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 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, nine of which were on Friday nights, whereas the District's girls' high school basketball team had 22 scheduled games, one of which was on a Friday night.

The District provided its competitive high school sports schedules for the 2022-2023 school year. The schedules show that the varsity boys' football team played ten games on Friday nights. The girls' volleyball team played on weeknights with one Saturday afternoon game. Both the boys' and girls' golf teams played all of their competitions on weekday mornings or afternoons except for one Friday morning tournament. Many of the varsity girls' softball and boys' baseball games were scheduled for the same day and same time. The softball team played 26 regular season games, with ten games on Friday evening or Saturday afternoon (including two doubleheaders) and the baseball team played 26 total regular season games, with eight games on Friday evening or Saturday afternoon (including two doubleheaders). The baseball and softball schedules showed that each team had a pre-season scrimmage schedule, with the boys playing three scrimmages and the girls four. Girls' and boys' cross country and track meets were held on weeknights at 4:30 p.m., or Saturday mornings.

With respect to basketball, OCR confirmed after reviewing the District's basketball schedule for the 2022-2023 school year that the varsity boys' team had 22 regular season games, nine of which were scheduled on Friday night, six of which were scheduled for Saturday night, and the remaining seven of which were scheduled on Monday, Tuesday or Thursday nights. The varsity girls' basketball team had 22 scheduled games, including one Friday night game, four Saturday afternoon games, and 17 weekday games on Tuesdays and Thursdays. Both the boys' and girls' junior varsity teams were scheduled to play earlier on the same days as the varsity teams.

The District's [redacted content] [redacted content] [redacted content] told OCR that the District belongs to the Northwest Conference and the Putnam County League. He said that the Northwest Conference creates the schedules for all sports, usually three years in advance in order to secure officials. He said the conference commissioner creates the schedule and distributes it to the member ADs. He stated that, for the Putnam County league, the ADs have a set order that they play the other league members and then the ADs coordinate the dates that the games occur. He stated that this is done typically one to two years in advance. He stated that for baseball and softball the Putnam County league has a schedule put together like the Northwest Conference. The [redacted content] told OCR that the Putnam league basketball schedule is determined three years in advance and they try to schedule the remaining non-league games two years in advance.

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 either weeknights or early Saturday afternoons. 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 CPM, 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 6, 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 **October 31, 2023**. For questions about implementation of the Agreement, please contact David Schwark, who will be overseeing the monitoring and can be reached by telephone at (216) 522-7629 or by e-mail at

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David.Schwark@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667 or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure