



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

July 7, 2023

Via email only to: [redacted content]

Erin Wessendorf-Wortman, Esq.
Ennis Britton Co., LPA
1714 West Galbraith Road
Cincinnati, Ohio 45239

Re: OCR Docket No. 15-23-1212

Dear Ms. Wessendorf-Wortman:

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 Deer Park Community City Schools (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, 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 and District staff.

Background

The District is a member of the Cincinnati Hills League (the conference) with seven other school districts, including Finneytown Local School District, Indian Hill Exempted Village School District, Madeira City Schools, Mariemont City Schools, Reading Community City School District, Three Rivers Local School District, and Wyoming City School District. The District has been a member of the conference since it was formed in 1985.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

OCR investigated an alleged disparity in the scheduling of the District's boys' and girls' high school varsity basketball games, in that girls' games are never 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, eight of which were on Friday nights, whereas the District's girls' basketball team had 22 scheduled games, none of which were on a Friday night.

Information Obtained to Date

OCR reviewed the District's basketball schedules for the 2022-2023 school year as provided by the District. The boys' varsity basketball team played 26 games, nine of which were on a Friday night and two of which were on a Saturday afternoon. The girls' varsity basketball team played 26 games, none of which were on a Friday night and ten of which were on a Saturday morning or afternoon. The boys' junior varsity team was typically scheduled to play earlier on the same days as the varsity teams. The District did not field a girls' junior varsity basketball team or any freshman basketball teams.

The District's [redacted content] said conference games are scheduled by the conference districts' ADs collaboratively, and scheduling of non-conference games is up to each district's AD. The [redacted content] described the District's plan for scheduling more Friday night games for the girls' basketball team in the 2023-2024 school year.

The [redacted content] identified football as the sport that draws the most spectators, followed by boys' basketball. The [redacted content] said weekend (Friday and Saturday) boys' basketball games are the best-attended basketball games, and that boys' basketball games are better attended than girls' basketball games. The [redacted content] was not aware of an example of scheduling of girls' games in other District sports that might offset the alleged inequity in basketball scheduling.

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

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 there is a difference in scheduling with varsity boys' basketball team plays games on Friday nights, whereas the varsity girls' basketball team plays most of its games on either weeknights or Saturday mornings/afternoons. The varsity girls did not play any Friday night games during the 2022-2023 season, while the boys played nine games on Friday nights. The [redacted content] told OCR that there are typically bigger crowds at boys' basketball games. 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 July 5, 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 16, 2023**. For questions about implementation of the Agreement, please contact Ms. Allison Beach, who will oversee the monitoring and can be reached by telephone at (202) 987-1846 or by email at Allison.Beach@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640 or by email at Sacara.Miller@ed.gov.

Sincerely,

Sacara Miller
Supervisory Attorney/Team Leader

Enclosure