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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

DATE

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

John Podgurski, Esq.  
9155 Chillicothe Road  
Kirtland, Ohio 44094

Re: OCR Docket No. 15-23-1242

Dear Mr. Podgurski:

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 Bethel Local School District (the District) alleging that the District discriminated against female athletes 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 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 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 in Clermont County Ohio, approximately 30 miles southeast of Cincinnati. It is in the Three Rivers Athletic Conference with seven other school districts, including Covington

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Exempted Village School District, Lehman Catholic, Miami East Schools, Milton Union Exempted Village School District, Northridge Local Schools, Riverside Local Schools, and Troy Christian Schools. Three Rivers Conference was formed two years ago, at the beginning of the 2021-2022 school year, and the District was one of the original members of the conference.

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, 12 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.

OCR examined the District's competitive high school sports schedules for the 2022-2023 school year. The schedules show that the varsity boys' football team played exclusively on Friday nights. The girls' volleyball team played on weeknights or Saturday mornings. Varsity girls' and boys' soccer teams each played six Saturday games, all but one of which started at 5:30 pm or later, and both the girls' and boys' golf teams played most of their games on weeknights. Many of the varsity girls' softball and boys' baseball games are scheduled for the same day and same time, and there is no disparity in the number of Friday and Saturday night games each team has scheduled for the spring 2023 season. The baseball team was scheduled to play its first season game on Monday April 3, and the softball team was scheduled to play its first season game on Tuesday, April 4, 2023. Girls' and boys' cross country, track, and swimming meets were either held or have been scheduled for the same days and times.

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 23 regular season games, 12 of which were scheduled on a Friday night, four of which were scheduled for Saturday night, and the remaining seven of which were scheduled on Tuesday nights. The varsity girls' basketball team schedule showed one Friday night game, nine Saturday games, one of which was scheduled for the evening, and 12 weekday games, primarily on Thursdays. Both the boys' and girls' junior varsity teams were scheduled to play earlier on the same days as the varsity teams. The District did not field a girls' freshman basketball team, but the boys' freshman basketball team played during the earliest time slots on the same days the boys' junior varsity and varsity teams played.

[redacted content] [redacted content] [redacted content] [redacted content] told OCR that there are 14 boys' and girls' conference basketball games and eight nonconference games. [redacted content] [redacted content] [redacted content] stated that the conference games for the varsity boys' team are generally scheduled on Tuesdays, Fridays, and Saturdays. [redacted content] said that conference games for the varsity girls' team are on Thursdays and Saturdays. [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] schedule games against teams that are not in the conference on any day of the week, but [redacted content] [redacted content] when the other team is playing due to gymnasium access, and [redacted content] [redacted content] also tries not to schedule games on the same nights as other high school athletic competitions to avoid splitting the crowds.

With respect to crowd size, [redacted content] [redacted content] [redacted content] told OCR that the District typically sells anywhere between 50-200 tickets to basketball games on Monday

through Thursday, and approximately 200-250 tickets to Friday night games. [redacted content] stated that ticket sales depend on the quality of the game, whether it is against a rival, and other factors. [redacted content] [redacted content] [redacted content] told OCR that if the girls' [redacted content] [redacted content] [redacted content] [redacted content] there are times when the ticket sales do not reflect the attendance because of “get-in free” promotions and the like.

[redacted content] [redacted content] [redacted content] also told OCR that during the 2021-2022 school year the [redacted content] [redacted content] [redacted content] requested more Saturday evening games because [redacted content] felt that the girls' team was good and they wanted bigger crowds. [redacted content] [redacted content] [redacted content] said that they moved the girls' Saturday games to later in the day, which has driven the attendance up. A review of the 2022-2023 varsity girls' [redacted content] schedule shows that, of the [redacted content] varsity girls' [redacted content] games on Saturday, one was scheduled for 6:00 pm, and the other eight were scheduled for either 1:30 pm or 3:00 pm. The varsity boys' [redacted content] team played [redacted content] of its Saturday night [redacted content] games starting at 7:30 p.m., and [redacted content] [redacted content] Saturday game listed on the schedule did not include a time.

According to [redacted content] [redacted content] [redacted content], varsity boys' football, varsity boys' basketball, and varsity girls' basketball are generally the most popular spectator sports at the high school.

### **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 Saturday afternoons. Although [redacted content] [redacted content] [redacted content] told OCR that the crowds were relatively equal for both team games, [redacted content] also told OCR that the girls' [redacted content] [redacted content] requested that the girls play more games on Saturday evenings to draw larger crowds to their games. Further, the schedule indicates that this requested change did not happen in the 2022-2023 school year. The evidence also shows that in the fall the only team that plays on Friday nights is the boys' football team, and that, collectively, boys' sports teams play more Friday and Saturday night games than girls' sports teams. Thus, the disparity for the girls' basketball team is not offset by more favorable primetime scheduling for other girls' teams. 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 May 4, 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 **July 7, 2023**. For questions about implementation of the Agreement, please contact Ann Millette, who will be overseeing the monitoring and can be reached by telephone at (216) 522-2679 or by e-mail at [Ann.Millette@ed.gov](mailto:Ann.Millette@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](mailto:Brenda.Redmond@ed.gov).

Sincerely,

Brenda Redmond  
Supervisory Attorney/Team Leader

Enclosure