



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION XV  
MICHIGAN  
OHIO

July 20, 2023

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

[redacted content]  
Weston Hurd LLP  
1300 East 9<sup>th</sup> Street, Ste. 1400  
Cleveland, Ohio 44114

Re: OCR Docket No. 15-23-1327

Dear [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 North Olmsted City School District (the District) alleging that the District discriminated against female athletes based on sex because it 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, the Complainant's son, 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 located in northeast Ohio. It is a member of the Great Lakes Conference (GLC). In the GLC with the District are Parma, Normandy, Valley Forge, Rocky River, Fairview,

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Lakewood, Buckeye, Bay Village, Westlake, Holy Name and Elyria Catholic.

## **Facts**

The complaint 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 complaint alleged that during the 2023 basketball season, the District's boys' high school basketball team had 23 scheduled games, ten of which were on Friday nights. Comparatively, the District's girls' high school basketball team had 23 scheduled games, one of which was on a Friday night. The Complainant submitted copies of the District's 2022-2023 boys' and girls' high school basketball schedules. The Complainant's son stated that the disparity in the District's scheduling of boys' and girls' high school varsity basketball games deprives the girls' team of the opportunity to play in front of large Friday evening crowds. He further stated that the disparity in scheduling also disadvantages the girls' varsity basketball players' because the number of games scheduled on school-nights impedes their ability to complete homework and interferes with their personal schedules.

After reviewing the basketball schedules for the 2022-2023 school year provided by the District in its response to OCR, OCR confirmed that the boys' varsity basketball team was scheduled for 23 games, ten of which were on Friday nights, eleven on Tuesday nights, one on a Wednesday night, and one on a Thursday night. The girls' varsity basketball team was scheduled for 23 games, ten on Wednesday nights, three on Monday nights, one on a Friday night, and nine on Saturday afternoons.

The District's [redacted content] told OCR that the GLC has a League Secretary who puts together the master schedule. That schedule is reviewed by a Scheduling Committee made up of three GLC athletic directors. Then the draft schedules are shared with all the GLC athletic directors, who vote to approve them. For non-conference games, the AD asks the head coaches who they want to play out of the conference. [redacted content] added that some "home and home" matches are built into the schedule for consecutive seasons.

The [redacted content] stated that the conference games for the boys' varsity team are generally scheduled on Tuesdays and Fridays. [redacted content] said that conference games for the girls' varsity team are on Wednesdays and Saturdays. [redacted content] stated that he tends to use those nights for non-conference games as well.

The [redacted content] explained that they sell tickets for all home basketball games and that attendance is larger for boys' games compared to the girls' games. [redacted content] said that the boys' team tends to draw a little better on Fridays compared to Tuesdays.

## **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 girls' basketball team and boys' basketball team, OCR has a cause for concern that the boys' varsity

basketball team plays far more games on Friday nights than the girls' varsity basketball team, who plays almost all of its games on either weeknights or 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 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 18, 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 **December 1, 2023**. For questions about implementation of the Agreement, please contact Vincent Cheverine, who will be overseeing the monitoring and can be reached by telephone at (216) 522-2676 or by e-mail at Vincent.Cheverine@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2672 or by e-mail at Nathaniel.McDonald@ed.gov.

Sincerely,

Nathaniel McDonald  
Supervisory Attorney/Team Leader

Enclosure