



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

September 8, 2015

Dr. Elñora Webb, President
Laney College
900 Fallon Street
Oakland, California 94607

(In reply, please refer to case no. 09-14-2331.)

Dear President Webb:

On July 16, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Laney College (College). The complaint alleged sex discrimination in the College's intercollegiate athletics program. OCR investigated whether the College provides equivalent benefits within the intercollegiate athletics program to female athletes as compared to male athletes. Prior to the conclusion of the OCR investigation, and before OCR reached compliance determinations, the College expressed an interest in taking action to resolve the allegations in this complaint.

OCR enforces Title IX of the Education Amendments of 1972 which prohibits discrimination on the basis of sex in programs and activities operated by recipients of Federal financial assistance. The College receives funds from the Department and is subject to the above law and its regulations as enforced by OCR.

The Title IX regulations, at 34 C.F.R. §106.41, provide that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any intercollegiate athletics offered by a recipient college or university, and no recipient college or university shall provide any such athletics separately on such basis. As a means of assessing compliance under the regulations, OCR follows the Policy Interpretation issued by the Department on December 11, 1979, 44 Fed. Reg. 71413, et seq. (1979).

In its investigation, OCR examined the following areas of the College Athletic Program: equipment and supplies; scheduling of games and practice times; travel and per diem allowances; opportunity to receive tutoring; opportunity to receive coaching; provision of locker rooms, practice and competitive facilities; and provision of medical and training facilities and services; housing and dining facilities and services; publicity; support services; and recruitment of student athletes.

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

In each of the areas, OCR examines whether the availability and quality of benefits, opportunities, and treatment provided were equivalent for members of both sexes. Equivalent is defined as equal or equal in effect. In accordance with the 1979 Policy Interpretation, OCR compared components of the men's program and the women's program on an overall basis, not on a sport-by-sport basis. Where disparities are noted, OCR considers whether the differences are negligible. Where the disparities were not negligible, OCR determines whether they were the result of nondiscriminatory factors. Finally, OCR determines whether disparities resulted in the denial of equal 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.

Using the criteria provided in the Policy Interpretation, OCR examined the benefits, services and opportunities provided to male and female athletes. OCR began gathering evidence in the investigation of this complaint through reviewing documentation provided by the College and the Complainant, and interviews with College administrators, staff and students, and witnesses provided by the Complainant.

Background

Laney College is a community college located in Oakland, California. The College fields the following five women's sports: track and field, swim and dive, water polo, basketball and volleyball. The College fields the following two men's sports: football and baseball.

In November 2011, the College's athletic program built a new facility known as the Athletic Fieldhouse adjacent to its outdoor sports complex. The athletic fields closest to the Fieldhouse are the two male sports (football and baseball) and one female sport (track and field). The Fieldhouse has locker rooms, strength and conditioning room, athletic trainer room, classrooms, and wireless internet access. The Athletic Director's office is in this building. The remaining four female teams use the College's Gymnasium, built in the 1960's, and pool which are located across the campus from the Fieldhouse. These teams share the Gymnasium locker rooms and Fitness Center with the general student population. Based on the investigation conducted, OCR identified some concerns under Title IX in the following areas of the athletic program:

Tutoring

At the time the complaint was filed, all student athletes had access to the same academic support services as the general student population. However, the coaches for each team were providing supplemental academic supports either personally, or by bringing in a faculty tutor or holding study halls. Based on the evidence OCR gathered, coaches appeared to offer this type of support to their team in varying degrees. The College does have an academic counselor who is responsible for assisting students with academic and athletic transfer eligibility. At the initial stage of OCR's investigation, the individual was assigned only 50% time to focus on student

athletes, and the other 50% was dedicated to the general student population. Due to this limitation of time, female athletes from smaller roster sports felt they were not able to as readily access the athletic academic counselor based on the sheer number of male athletes to female athletes trying to fit into the schedule.

During the course of OCR's investigation and during negotiation of the voluntary Resolution Agreement in this case, the College was able to resolve some of these concerns by increasing the percentage of time the academic counselor could spend serving student athletes. To provide uniform and quality academic support to all athletes, the College worked to create a supplemental academic support program, with paid tutors, available to all athletes beginning in the spring 2015 season.

Coaching

At the College, head coaches are typically hired as full-time faculty and must meet the qualifications for faculty kinesiology/athletics instructors. However, head coaches can also be hired as part-time faculty. During the 2014-2015 school year, the swim and dive, water polo, volleyball, and track and field coach were part-time faculty members. The benefit to the athletes by having a full-time faculty member coach is that the coach tends to have greater familiarity with scheduling the coursework related to the team, have greater knowledge about either coaching or athletic training, and have better access to the resources on campus to support the students' eligibility to transfer to four year universities as athletes.

OCR observed that the biggest difference between the coaches of the male and female teams is the experience level of the coaches in the sport and in navigating the community college system as a faculty member. The newer coaches had less experience in areas such as off season training, scheduling in season specific courses and practice times, or in some strength and conditioning techniques and equipment. These head coaches also agreed that there could be more College support for new coaches in how to provide the most support for the student athletes within the College system and athletic conference requirements. None of the athletes felt that their coach lacked in knowledge about the sport and strategy around being successful in the sport.

During the course of OCR's investigation, the College informed OCR that it began providing coaches more support for fulfilling the responsibilities of their position through mentoring from the Athletic Director, and began adjusting its in service and coaches' meetings to include more information about supporting student-athletes in the community college system.

Provision of Locker Rooms and Practice and Competitive Facilities

As described above, the biggest difference between the locker rooms used by the College's athletic teams is the quality of the locker rooms at the Athletic Fieldhouse compared to the Gymnasium. There are dedicated locker rooms for football, baseball and women's track and field at the Athletic Fieldhouse as compared to the open locker room space at the Gymnasium.

The locker rooms in the Athletic Fieldhouse are outfitted with white boards, cork board, flat screen TV, showers, sinks and toilets. The athletes who use the women's locker room at the Gymnasium are assigned lockers, but they are not separate from the general student population lockers. Even though there are more of them, the showers, sinks and toilets are shared with other students. The Fieldhouse also has team meeting room areas while the Gymnasium team rooms are in a state of disrepair. The athletes and coaches informed OCR that the Fieldhouse location poses an inconvenience by adding travel time to and from that area of campus back to the Gymnasium for practice or games.

During the course of OCR's investigation, the College hired an architect to draft the plans to renovate the Gymnasium locker room to provide dedicated team rooms, locker areas, and shower facilities for the female teams. The College informed OCR that it wanted to go forward with renovation of the locker room and training facility at the Gymnasium through a voluntary Resolution Agreement.

Medical and Training Facilities and Services

The College has one full time athletic trainer for all the student athletes and he has access to two training rooms. The main training room is located at the Athletic Fieldhouse, and there is an old training room in the Gymnasium locker facilities. The equipment and supplies in the Athletic Fieldhouse are modern and available in a sufficient amount, while the training room in the Gymnasium has antiquated and inadequate equipment. The women's pool and Gymnasium sports use the old training room for game days, while the two men's sports and women's track and field can use the new training room at the Athletic Fieldhouse. Since there is only one athletic trainer for all of the sports, the trainer prioritizes his attendance at home games based on the level of risk of injury. The trainer informed OCR that the order of risk of injury by sport is football, basketball, water polo, baseball, volleyball and swim and dive. By regulation, he must attend the football games as a high risk sport. During practice time and the off season, the female athletes have to go to the Athletic Fieldhouse to see the trainer on a drop in basis. The trainer did not have dedicated time for any sports or make appointments for athletes. This type of scheduling makes it difficult, and intimidating, for female athletes to be seen because based on the sheer number of male athletes to female athletes, a first come first served practice makes it less likely for a female athlete to see the trainer.

There are two weight-training facilities at the College. The Olympic style weight lifting facility is located at the Athletic Fieldhouse, and the second is the Fitness Center located at the Gymnasium. There is a room in the Fitness Center that has some Olympic style weight lifting equipment. This room is also used for the spin class. There is another room in the Fitness Center that has cardio machines and assisted weight lifting machines. Some of the cardio machines are out of repair. The Fitness Center is a facility shared with the general student population and student athletes must rotate in with other users if they are training in this facility. The weight lifting facility in the Athletic Fieldhouse is not open to the general student population unless they are enrolled in a Kinesiology or Athletics course. However, student athletes may only use this facility under the supervision of their coach or the

strength/conditioning coach that manages the facility. They may also enroll in the strength/conditioning coach's Kinesiology courses, which the football and baseball coaches encourage their athletes to do. The coaches of the female teams stated they were not sure if the courses were open to the female athletes and whether the program would be appropriate for training for their sports. The Athletic Director informed OCR that these types of classes are available to all athletes.

Prior to OCR's completion of the investigation, the College began to address some of these concerns. For instance, the athletic trainer began scheduling dedicated time for female athletes, the College hired an architect to draft a proposal to upgrade the Gymnasium training room which would include new equipment and supplies, and began posting an additional part time athletic trainer or hourly trainer for the fall 2015 season. The College also created a schedule in the Fitness Center for dedicated time for athletes, submitted purchase orders for upgrading the Fitness Center equipment, and created a greater range of strength and conditioning courses. Further, the strength/conditioning instructor began developing an in-service to the coaches of female teams to close the gap in knowledge around using certain types of equipment.

Conclusion

Prior to the conclusion of the OCR investigation, and before OCR reached compliance determinations, the College expressed an interest in taking action to resolve the allegations in this complaint in the areas that OCR identified concerns under Title IX. Under Article III, Section 302 of OCR's Case Processing Manual, a complaint may be resolved before the conclusion of an investigation when the recipient expresses an interest in such a resolution and agrees to a resolution that is aligned with the complaint allegations and consistent with applicable regulations. On September 1, 2015, the College provided OCR with a signed Resolution Agreement. As such, OCR is closing the investigative activity under this complaint number as of the date of this letter.

OCR concludes that the actions agreed to by the College in the enclosed Resolution Agreement will resolve the compliance issues raised in this case. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact Tammi Wong, Civil Rights Attorney, at 415-486-5564.

Sincerely,

/s/

James M. Wood
Team Leader

Encl.