



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

August 25, 2010

Dr. JoAnn Gora
President
Ball State University
2000 University Avenue
Muncie, Indiana 47306

RE: OCR Docket # 05-09-6001

Dear Dr. Gora:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (Title IX), and its implementing regulation at 34 C.F.R. Part 106. The compliance review addressed the following issues: whether the University is providing equal intercollegiate athletic opportunities to men and women with respect to the provision of equipment and supplies, the scheduling of games and practice time, the allocation of travel and per diem allowances, the opportunity to receive coaching and the assignment and compensation of coaches, the opportunity to receive tutoring and the assignment and compensation of tutors, the provision of locker rooms, practice and competitive facilities, the provision of medical and training facilities and services, the provision of housing and dining facilities and services, the provision of support services, the recruitment of student athletes, and publicity.

OCR had authority to initiate this compliance review under Title IX and its implementing regulation, which prohibit discrimination on the basis of sex in education programs and activities that receive federal financial assistance from the U.S. Department of Education (Department). The University is a recipient of Federal financial assistance from the Department.

The provision of equal athletic opportunities in athletics programs is specifically addressed in the Title IX implementing regulation at 34 C.F.R. §106.41. The Title IX implementing regulation, at 34 C.F.R. §106.41(a) states 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 interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.” The regulation, at 34 C.F.R. §106.41(c), in relevant part, requires a recipient to provide equal athletic opportunity for members of both sexes, including at 34 C.F.R. §106.41(c)(2), the provision of equipment and supplies, at §106.41(c)(3), in the scheduling of games and practice time, at §106.41(c)(4), in the allocation of travel and per diem allowance, at §106.41(c)(5 and 6), in the opportunity to receive coaching and the assignment and

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compensation of coaches and the opportunity to receive tutoring and the assignment and compensation of tutors, at §106.41(c)(7), in the provision of locker rooms, practice and competitive facilities, at §106.41(c)(8), in the provision of medical and training facilities and services, at §106.41(c)(9), in the provision of housing and dining facilities and services, and at §106.41(c)(10), in the provision of publicity. To assess whether a recipient is providing equal athletic opportunities, OCR also references the Department's "Intercollegiate Athletics Policy Interpretation," issued December 11, 1979, and found at 44 Fed. Reg. 71413 et seq. (Policy Interpretation). The Policy Interpretation identifies two additional program components to be assessed by OCR in determining whether a recipient is providing equal athletic opportunity for members of both sexes: the recruitment of student athletes and the provision of support services.

During OCR's investigation, OCR interviewed the University's Athletic Director (AD) and University staff, reviewed documentation provided by the University and reviewed responses provided by coaches and athletes from each of the University's men's and women's intercollegiate athletics teams to questionnaires prepared by OCR. OCR has completed its investigation of the following two program components: the scheduling of games and practice time and the opportunity to receive tutoring and the assignment and compensation of tutors. With respect to these two program components, OCR has determined that the evidence is insufficient to conclude that the University is denying women equal intercollegiate athletic opportunities. An explanation of this determination follows.

Background

The University is a public university located in Muncie, Indiana. According to the University's website, the University enrolled 16,832 undergraduate students during the 2008-09 academic year. Women represent approximately 52% of the University's undergraduate students. The University offers intercollegiate athletics participation opportunities in seven sports for men (baseball, basketball, football, golf, swimming, tennis and volleyball) and eleven sports for women (basketball, cross country, field hockey, golf, gymnastics, soccer, softball, swimming, tennis, track and volleyball). The athletics teams compete in the Mid-America Conference (MAC).

Scheduling of Games and Practice Time **34 C.F.R. 106.41(c)(3)**

In assessing compliance with respect to the scheduling of games and practice time, OCR considers: (1) the number of competitive events per sport; (2) the number and length of practice opportunities; (3) the time of day that 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.

Facts

The following chart shows the maximum number of dates of intercollegiate athletic competition permitted by the National Collegiate Athletic Association (NCAA) and the

number of athletic competitions¹ that were scheduled for each of the University's intercollegiate athletics teams during the 2008-09 academic year.

Women			Men		
Team	Scheduled	NCAA Maximum	Team	Scheduled	NCAA Maximum
Basketball	29	29	Baseball	56	56
Cross Country	4	7	Basketball	29	29
Field Hockey	19	20	Football	12	12
Golf	23	24	Golf	24	24
Gymnastics	11	13	Swimming	12	20
Soccer	19	20	Tennis	21	25
Softball	56	56	Volleyball	25	28
Swimming	17	20			
Tennis	17	25			
Track	16	18 (indoor and outdoor)			
Volleyball	28	28			

As shown in the chart, men's teams engaged in 179 out of a possible 194 competitions, or 92.3% of the maximum allowed by the NCAA. Women's teams engaged in 239 out of a possible 260 competitions, or 91.9% of the maximum allowed by the NCAA. Neither the AD, nor the athletes and coaches indicated that any teams were prevented from scheduling the maximum number of games allowed by the NCAA.

The AD told OCR that the NCAA determines the maximum number of competitive events in which each team is allowed to compete per year and that this maximum governs the scheduling of competitive events for the University's teams. In responses to OCR's questionnaires, only a few complaints were raised by coaches regarding the number of competitive events offered to their teams. The coaches of the men's volleyball team and the men's and women's tennis teams stated that their team budgets were not sufficient to cover the expenses of food, lodging and transportation associated with traveling to competitive events. These coaches stated that this budget restriction prohibited their teams from competing in the maximum number of competitions allowed by the NCAA each season. Male and female swimmers indicated that during the 2008-09 season, an unspecified number of swim meets were canceled because of a chlorination problem with the pool. Of the remaining sports, neither athletes nor coaches indicated any problems in relation to the number of competitions in which they compete.

In regard to the number and length of practice opportunities afforded men's and women's teams, the University explained that the Office of Sport Facilities Management established policies and procedures for use of indoor and outdoor athletic facilities. According to the procedures, an itemized practice schedule must be submitted to the Office at least two months prior to the first official practice of the season. A request for use of an athletic facility for a non-scheduled practice must be submitted at least two

¹ The men's and women's golf teams competed in both fall and spring seasons. The women's field hockey, soccer, softball and tennis teams and the men's tennis and volleyball teams also engaged in additional competitions during a non-traditional season that are not included in the chart.

weeks in advance. The University reported that the Associate Athletic Director for Compliance and Facilities meets with the Sports Facilities management staff on a weekly basis to submit the practice-related facility needs of the athletic department and to schedule special events, such as camps, clinics and meetings.

With a few exceptions, athletes and coaches reported no concerns about the number or length of practice opportunities afforded their teams. The women's field hockey coach stated that her team's practice schedule is altered on days when the football team competes at home, but did not suggest practices were cancelled. A male basketball player and female gymnast each indicated that their teams' practices are sometimes cancelled due to conflicts with other events in the gymnasium, but did not indicate that this occurred frequently. Athletes on the men's and women's swimming teams complained that their practices have been cancelled because of conflicts with the recreational swim schedule. The coaches of both the men's and women's tennis teams indicated that scheduling conflicts sometimes arose at the off-campus Muncie YMCA that affected their teams' indoor practices. Both the men's and women's volleyball coaches expressed frustration at not getting priority status for in-season practices, as special events force them to relocate or cancel.

As for the time of day competitive opportunities are scheduled, the AD stated that the MAC schedules the times for most competitions. He added that the MAC attempts to schedule competitions when classes are typically not in session. According to the AD, most teams in the MAC travel by bus to competitions, and the MAC takes this into consideration as well when scheduling game times. With the schedule created by the MAC, the Associate Athletic Director for Compliance and Facilities submits a competitive schedule for each athletic program to the Office of Sport Facilities Management at least six months in advance. The AD noted that generally, men's and women's volleyball and basketball games are played at 7:00 p.m. on weeknights and played in the early afternoon on weekends. Women's soccer matches are usually played on Friday nights, and football games are usually played on Saturday afternoons. OCR found no evidence to suggest that men's teams were more likely than women's teams to play their contests on weekends and no athletes or coaches complained about the days of the week on which their contests were scheduled. OCR also found no evidence to suggest that men's teams get priority over women's with respect to the scheduling of competitions.

Coaches of both the men's and women's golf teams indicated that conflicts sometimes arise regarding the availability of the teams' golf course for competitions because the private golf clubs do not always give them priority status for competitions. On rare occasions, the men's and women's golf teams have been forced to share the course with the public during matches. Of the remaining sports, neither athletes nor coaches indicated any problems in relation to the time of day competitive opportunities are scheduled.

In regard to the time of day practice opportunities are scheduled for men's and women's teams, the AD stated that most teams practice for three hours per day. As teams get

closer to competition, the length of practices may be shortened so that the athletes are fresh for competition. The AD explained that because men's and women's teams share most of the athletic facilities, they have worked out an amicable arrangement whereby both teams get preferred practice times during their competitive seasons. For example, the women's basketball team will practice from 11:00 a.m. – 2:30 p.m. during the fall semester and the men's basketball team will practice after the women complete their practice. For the spring semester, the time slots are flipped, with the men practicing first and the women practicing second. The AD explained that the teams follow this schedule in order to allow fair scheduling of required classes for the student athletes. Neither athletes nor coaches indicated any problems in relation to the time of day practice opportunities are scheduled.

In regard to opportunities to engage in pre-season and post-season competition, the AD stated that the NCAA counts preseason competitions when calculating the maximum number of competitive events allowed each sport. The AD further explained that tournament play may or may not count toward the maximum allowable competitions per year, depending on its location and the date of the tournament. Tournaments that count toward the yearly maximum allowable competitions are termed "non exempt," and tournaments that do not count toward the yearly maximum allowable competitions are termed "exempt." The AD stated that the NCAA allows teams to compete in "exempt" tournaments only once every four years. The AD added that the NCAA also allows teams to play no more than one exhibition game each year. Exhibition games are not counted toward the maximum allowable competitions per year. The AD indicated that post-season competition is not counted in the maximum allowable competitions for each sport per year. With the exception of men's football, all men's and women's teams participate in a post-season conference tournament. Eligibility for participation in post-season competitive events sponsored by the NCAA is determined by the NCAA and typically based on the winning record of each sport or performances by individual athletes. Neither athletes nor coaches mentioned any dissatisfaction with their team's opportunities to engage in available pre-season and post-season competition.

Analysis

OCR analyzed five areas relating to the benefits, treatment, services and opportunities provided to the University's male and female athletes with respect to the scheduling of games and practice time. OCR's investigation revealed that the University's men's intercollegiate athletics teams are no more likely than the University's women's intercollegiate athletics teams to engage in the maximum number of competitions allowed by the NCAA. Although there were some complaints raised by athletes and coaches regarding the number of practice opportunities afforded certain teams, these complaints were raised by both men's and women's teams. Additionally, none of the coaches or athletes raised concerns about the length of practice opportunities. There is no evidence to suggest that men's teams were afforded a substantially higher number of practice opportunities than women's teams. Only the men's and women's golf coaches expressed frustration with the time of day competitive their teams' competitive events are held, as the private clubs where the competitions are held do not always give the

University's teams priority when scheduling golf meets. However, this affected both a men's and a women's team. OCR found no evidence to suggest that men's teams were more likely than women's teams to play their contests on weekends and no athletes or coaches complained about the days of the week on which their contests were scheduled. OCR also found no evidence to suggest that men's teams get priority over women's teams with respect to the scheduling of competitions. There is some evidence that practices of some teams have been cancelled or shifted to an earlier or later starting time due to conflicts with other events in or near a team's practice facility. However, the evidence does not suggest that this affects men's teams to a greater degree than women's teams. OCR's investigation identified no concerns regarding the opportunity to engage in available pre-season and post-season competition.

Therefore, OCR concludes that the University is providing equivalent benefits, treatment, services and opportunities with respect to the scheduling of games and practice time, in compliance with the implementing regulation of Title IX at 34 C.F.R. §106.41(c)(3).

Opportunity to Receive Tutoring and the Assignment and Compensation of Tutors
34 C.F.R. 106.41(c)(5) and (6)

Compliance in this area is assessed by examining, among other factors, the equivalence for men and women of the availability of tutoring, the procedures and criteria for obtaining tutorial assistance, tutor qualifications, including training and experience, and the terms and conditions of employment for tutors, including the hourly rate of payment by nature of subject tutored and pupil loads per tutoring session.

According to the University's website pertaining to academic support services for student athletes, at <http://www.bsu.edu/sass/>, free tutorial assistance is available to all University student athletes in the areas of core curriculum, mathematics, physics, economics and accounting. This assistance is provided at the University's Academic Learning Center (Center). The website identifies the hours of operation of the Center and includes telephone numbers and other contact information for the employees of the Center. The University reported that student athletes are challenged to become pro-active, to develop time-management and study strategies, and to stretch their individual sense of responsibility and maturity through individual monitoring and academic counseling, workshops, and study table participation. According to the University's website, all new student athletes are required to participate in a study table during their first semester at the University. Study tables are designed to teach students the most effective, efficient study techniques. Student athletes must attend the study tables weekly and fulfill a number of study table hours identified by their coach and Center staff. Students may fulfill this requirement in a variety of ways, including through supervised study sessions, completing additional academic work, spending time with professors or other support staff, or through tutoring sessions. During their freshman year, all student athletes must also participate in academic monitor meetings. Monitor meetings are for the purpose of discussing a student's academic progress and identifying ways to improve academic performance. Workshops are also offered to address academic concerns as needed.

According to the website, tutors are available at the Center on Monday through Thursday from 9:00 a.m. through 8:00 p.m. and on Friday from 9:00 a.m. through 12:00 p.m. Students can sign up for tutoring assistance on their own or with assistance from Center staff. Student athletes can also be referred to the Center to receive tutoring if it is deemed necessary.

Additionally, the University distributes annually to all athletes a Student Athlete Handbook (Handbook). Under a section entitled, "Academic Support Services for Student-Athletes," the Handbook states that the Academic Support Services staff is available to all student athletes to discuss any concerns about academics or other aspects of student life they might have. According to the University, Academic Support Services staff work as advocates for student athletes and help student athletes balance their academic responsibilities with their responsibilities as a participant in the University's intercollegiate athletics program.

The AD told OCR that the Center arranges tutorial and other academic support services for any student athlete who needs these services, regardless of sex. He explained that the Center offers student athletes tutoring, time management training, study skills development and academic counseling. The AD averred that assistance with writing, mathematics, reading and any other special academic needs, including academic support for athletes with learning disabilities, is provided at the Center. The AD reported that coaches of intercollegiate athletics teams advise student athletes about the services available at the Center during the recruiting process and again when the students first enroll at the University. Coaches may arrange for tutors to be available at study tables held at the Center. The AD noted that a student athlete may be relieved from attending mandatory study hours once the student has demonstrated her or his readiness for University academics by maintaining a specific grade point average established by her or his coach.

The AD told OCR that student athletes are not required to locate or pay for tutors or any other academic support services. The Center recruits, arranges and pays the salary for all tutors. The rate of pay does not vary based on the sex of the athletes being tutored and the process for obtaining tutoring services is the same for male and female athletes.

The day to day operation of the Center is the responsibility of the University's Coordinator for Academic Support Services (Coordinator). The Coordinator told OCR that any athlete, or his or her coach, may request tutorial assistance for the athlete, free of charge, by simply applying for this service at the Center. If the student athlete or coach requests tutorial assistance in a subject area for which no tutors are available, the Coordinator stated that the Center contacts the athlete's course instructor or the appropriate academic department to inquire about the availability of students to provide the tutorial assistance.

The Coordinator stated that athletes are made aware of the services available at the Center during the athletic department's annual student orientation session, through direct contacts the Center's staff has with each team, in the Student Athlete Handbook and on

the University's website. The Coordinator added that student athletes are not required to meet any eligibility requirements to obtain services from the Center; they merely need to ask for assistance. Additionally, the Coordinator told OCR that there were no differences in the provision of tutorial assistance, the qualifications of the tutors provided or the provision of other academic support services by the Center to male and female athletes.

In questionnaires completed by athletes and coaches, most male and female student athletes and all coaches confirmed that tutorial assistance was readily available to intercollegiate athletes at the University. The only concerns expressed by coaches about the tutoring services available to intercollegiate athletes were concerns about the quality of the tutoring provided expressed by the men's football and women's volleyball coaches. None of the athletes who completed questionnaires stated that their team had encountered any problems in receiving tutorial assistance, although a women's tennis athlete rated the tutoring services provided as below average.

Analysis

OCR found no evidence of any gender-based differences in the availability of tutoring for male and female athletes, the procedures and criteria that must be followed by male and female athletes to obtain tutorial assistance, or the qualifications of the tutors assigned to male and female athletes. To the extent concerns were expressed about the quality of the tutorial assistance provided to athletes, there was no evidence to suggest that female athletes were less likely than male athletes to have access to tutorial assistance. In addition, OCR found no evidence to suggest that the terms and conditions of employment of the tutors differed based on the gender of the athletes being tutored. Therefore, OCR concludes that the University is providing equivalent benefits, treatment, services and opportunities with respect to the opportunity to receive tutoring and the assignment and compensation of tutors, in compliance with the implementing regulation of Title IX at 34 C.F.R. §106.41(c)(5) and (6).

Based on the above, OCR has closed its investigation of the scheduling of games and practice time and the opportunity to receive tutoring and the assignment and compensation of tutors effective the date of this letter.

Prior to the conclusion of OCR's investigation of the remaining program components, the University requested to resolve the compliance review. Subsequent discussions with University officials resulted in the University signing the enclosed agreement (Agreement) which, when fully implemented, will fully resolve the remaining issues covered by the review. The provisions of the Agreement are aligned with those issues and the information obtained during OCR's investigation and are consistent with the applicable regulations.

OCR will monitor the University's implementation of the Agreement. We look forward to receiving the University's first monitoring report which is due by August 31, 2010.

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OCR wishes to thank you, your staff and Mr. James R. Williams, the University's Counsel, for the cooperation extended to OCR during the course of its investigation. If you or your staff have any questions regarding this matter, please do not hesitate to contact me or Dave Blom of my staff at 312-730-1566.

Sincerely,

/ s /

Debbie Osgood
Director

Enclosure

cc: Mr. James R. Willimams
Counsel