



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
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TEXAS

December 7, 2012

Re: OCR Docket # 06-11-6001,
LSU Compliance Review

Dr. William L. Jenkins, Interim Chancellor
Louisiana State University
Office of the Chancellor
156 Thomas Boyd Hall
Baton Rouge, Louisiana 70803
chancellor@lsu.edu
Sent via U.S. Mail and Email

Dear Chancellor Jenkins:

This letter is to notify you of the disposition of the above-referenced compliance review of Louisiana State University (LSU or University) by the U.S. Department of Education (the Department), Office for Civil Rights (OCR) under 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. § 106. The compliance review addressed whether LSU is providing opportunities for financial assistance to members of both sexes in proportion to the participation rate of men and women in the intercollegiate athletics program, and whether LSU is providing male and female students an equal opportunity to participate in its athletics program by effectively accommodating the athletic interests and abilities of members of both sexes.

OCR is responsible for enforcing Title IX and its implementing regulation, 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, LSU is subject to Title IX. Accordingly, OCR had jurisdictional authority to conduct this compliance review.

LEGAL STANDARDS

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a) states generally 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,

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intercollegiate, club or intramural athletics offered by a recipient [of Federal financial assistance], and no recipient shall provide any such athletics separately on such basis.” In this review, OCR examined whether LSU provide its athletes scholarship opportunities in proportion to the number of students of each sex participating in intercollegiate athletic. The provision of athletic scholarships or grants-in-aid is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.37(c), which states that “to the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in [] intercollegiate athletics.”

OCR also examined whether LSU provide male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The implementing regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity.

In addition to language from the regulation, OCR also uses as a mean of assessing compliance guidance provided in the “Intercollegiate Athletics Policy Interpretation,” issued December 11, 1979, (Policy Interpretation); the Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test, issued on January 16, 1996; and the Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three, issued on April 20, 2010. Taken together, these documents outline OCR’s analytic approach to the issues that were the focus of this review. Each issue will be addressed in turn.

FACTS

LSU is a public, coeducational university located in Baton Rouge, Louisiana. LSU is a member of the National Collegiate Athletic Association (NCAA), Division I, Southeastern Conference. The LSU athletic program consists of 20 varsity sports: men’s basketball, baseball, cross country, football, golf, swimming and diving, tennis, indoor track, and outdoor track; and women’s basketball, cross country, golf, gymnastics, soccer, softball, swimming and diving, tennis, indoor track, outdoor track, and volleyball.

ATHLETIC FINANCIAL ASSISTANCE

Under the Policy Interpretation, compliance with 34 C.F.R. § 106.37(c) is measured by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results to determine whether proportionately equal amounts of financial assistance are available to men’s and women’s athletic programs. Institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take

into account legitimate, nondiscriminatory factors. If any unexplained disparity in the scholarship budget for athletes of either sex is one percent or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Conversely, there will be a strong presumption that an unexplained disparity of more than one percent is in violation of the Title IX regulation.

OCR completed an analysis of the financial aid amounts awarded for the 2009-2010 and 2010-2011 academic school years and unduplicated counts of male and female athletic participation rates to assess proportionality in the awarding of financial assistance.¹ OCR determined that for 2009-2010, the male athletes represented 61.7% of the University's intercollegiate athletes and the female athletes represented 38.3% of the University's intercollegiate athletes. Information obtained from the recipient revealed that LSU distributed a total of \$8,221,640 of athletic financial assistance to its male and female athletes, with male athletes receiving \$4,710,733 (57.3%) and female athletes receiving \$3,510,907 (42.7%) for 2009-2010. Similarly, OCR determined that for 2010-2011, male and female athletes represented 60.2% and 39.8% of the University's intercollegiate athletes respectively, with a total of \$9,266,163 of athletic financial assistance being distributed to its male and female athletes. Male athletes received \$5,103,447 (55.1%) and female athletes received \$4,162,716 (44.9%).

The statistical data OCR received by LSU for 2009-2010 and 2010-2011 school years indicates that the athletic financial assistance received by male athletes is not proportionate to the male athletic participation rate, with a resulting male disparity of 4.4% in 2009-2010 and 5.1% in 2010-2011. Prior to the completion of OCR's investigation, LSU requested and agreed to resolve the review with a Voluntary Resolution Agreement.

INTERESTS AND ABILITIES

OCR examined whether LSU provided male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1). This interest and ability analysis consisted of two parts: (1) equal opportunities to participate; and (2) levels of competition.

OCR used the "Three-Part Test" to determine whether LSU provides equal opportunities to participate in its intercollegiate athletic program. The "Three-Part Test" involves consideration of the following three questions:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments (Part 1);

¹ In assessing the awarding of financial assistance, OCR utilizes an unduplicated count of male and female athletes (i.e. only counts athletes who participate in more than one sport once).

- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of that sex (Part 2); or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion, such as that cited above, whether it can be demonstrated that the interest and abilities of the members of that sex have been fully and effectively accommodated by the present program (Part 3).

Each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities.

For Part 1 of the “Three-Part Test”, OCR sought to determine whether LSU athletic participation rates for male and female students were proportionate to their respective enrollments. Information provided by LSU revealed that, during the 2009-2010 academic year, female students made up 51.0% of overall student enrollment, but were only 39.2% of the overall athletic participants. Comparatively, males made up 49.1% of overall enrollment and 60.6% of overall athletic participants. Thus, there was an 11.8% disparity between overall female enrollment and athletic participation. Similarly, OCR also considered 2010-2011 participation rates and found a disparity of 10.3% between overall female enrollment and athletic participation. With the 10.3% disparity in 2010-11 academic, LSU would have to create 135 new participation opportunities for female students to achieve proportionately in opportunities without decreasing opportunities for male students. Accordingly, OCR concluded that LSU is not providing participation opportunities for male and female student-athletes in numbers substantially proportionate to their respective enrollments. Women are underrepresented in LSU’s intercollegiate athletics program.

For Part 2 of the “Three-Part Test,” OCR sought to determine whether LSU has a history and continuing practice of program expansion. In considering whether past actions of an institution have expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities, OCR examines an institution’s record of adding intercollegiate teams, or upgrading club or intramural teams, for the underrepresented sex; its record of increasing participation numbers for the underrepresented sex; and its affirmative responses to student requests for the addition or elevation of sports. OCR also examines current practices that support continued expansion.

OCR reviewed data submitted by LSU and conducted interviews with the LSU athletics program staff, coaches and athletes to ascertain the LSU athletic program’s historical background. LSU provided the following information regarding the approximate inception of the male and female sports:

LSU Sports Development History

Current Sports	Year Competition Began
Baseball	1893
Men's Basketball	1909
Women's Basketball	1975
Men's Cross Country	1938-1939; 1967-Present
Women's Cross Country	1983
Men's Diving	1938-1940; 1969-Present
Women's Diving	1977
Football	1893
Men's Golf	1934
Women's Golf	1980
Gymnastics	1975
Women's Soccer	1995
Softball	1979-1981; 1997-Present
Men's Swimming	1969
Women's Swimming	1977
Men's Tennis	1924
Women's Tennis	1975
Men's Track	1894
Women's Track	1981
Volleyball	1973

Discontinued Sports	Began	Ended
Boxing	1929	1952
Men's Cross Country	1983	1939
	1967	present
Men's Gymnastics	1974	1984
Men's Swimming & Diving	1938	1940
	1969	present
Women's Softball	1979	1981
	1997	present

The information obtained from LSU revealed, most importantly, that the University has not added an intercollegiate women's athletic team in 15 years. LSU eliminated women's softball in 1981 and then reinstated it in 1997. The evidence further revealed that the only expansion that has occurred in women's sports since 1983 (cross country) has been the addition of only two female sports: women's soccer (1995) and softball (1997). In light of this information, OCR determined that LSU could not demonstrate a history and continuing practice of program expansion for women.

In determining compliance with Part 3, OCR began analysis and review of data submitted by LSU during the investigation and information obtained from OCR onsite activities concerning Part 3 of the "Three-Part Test." To make this determination, OCR will consider assessment of unmet interest and ability, if an institution has a practice of conducting such assessment. OCR

also typically looks to an institution's club and/or intramural program as indicators of possible interest and ability to participate in intercollegiate sports, and considers other indications of possible interest and ability such as developing sports on a nationwide level and/or the sports offered in the areas from which the recipient draws its students.

OCR's preliminary review of the initial data and on-site activities revealed that LSU has established procedures and methodologies to assess whether there is interest in a particular sport, sufficient ability to sustain a team in the sport, and a reasonable expectation for competition for the team. The evidence reveals that in 1997, in order to monitor the interests and abilities of students, the LSU Athletics Department implemented an Effective Accommodation Plan. The plan includes a once-every-four-year review of: sports offered in the region; institution recreation programs available; and enrolled students' interests and abilities. LSU holds open forums for students to indicate interest in elevating sports programs during each review cycle, and the forum is publicized through multiple media outlets. LSU conducts surveys of student athletic interests every four years of 1) all incoming freshman, 2) all undergraduates, and 3) all students who utilize the University Recreation facilities (UREC). LSU also does the following: surveys its entire coaching staff concerning current sports offerings; reviews current UREC offerings; surveys/communicates with the Louisiana High Schools Athletic Association; utilizes the National Federation of State High School Associations (NFHS) annual *High School Athletics Participation Survey* results; and surveys the Southeastern Conference (SEC) schools.

The evidence also reveals that, as part of the plan described above, an Effective Accommodation Committee was created consisting of an interdisciplinary team. The committee was established to study the information obtained from the assessments described above, and make formal recommendations to the University Chancellor and Athletics Director. A committee report was generated in 2002, 2004, 2008 and 2012. During the course of OCR's investigation and prior to resolution, OCR analyzed the 2008 Effective Accommodation Committee Report (Report) as the 2012 Report was not yet completed by the University. OCR utilized the 2008 survey data and documents provided by LSU for the 2008 review cycle, and the available preliminary data that was to be included in the 2012 Report.

Data provided by LSU indicates an interest in elevating the UREC women's equestrian club and women's crew to varsity sport status. The Equestrian Club, which has been established since 1999, has competed in the Intercollegiate Horse Show Association (IHSA) for the past 12 years and has been quite competitive regionally and nationally, including earning reserve champion and champion titles.

LSU reported to OCR that there have been no formal petitions for elevation or addition of a varsity sport. However, the evidence reveals there have been "informal" discussions at the open forums concerning adding sports and/or elevating clubs to varsity status. Specifically, in October 2008, LSU documents reveal that the women's equestrian club petitioned at the open forum for varsity status, reportedly with 19 members, who all qualified for regionals, competed

in an unsanctioned national championship, were self-funded and had their own leased practice facilities. At this same forum, 30 of the 60-70 members of the LSU Rowing Club also presented on behalf of women's crew. Subsequently, in the 2008 Effective Accommodation Committee Report to the Chancellor, the committee reported based on the analyses of the survey data from multiple indicators that there was "a strong sustained interest in women's equestrian," and a "sustained interest in women's crew/rowing" and also acknowledged that both clubs presented at the open forum. In addition, the 2008 report revealed a "new and strong interest" in both synchronized swimming.

The preliminary documents that were to form the basis of the 2012 Report reflected that an open forum was held for this review cycle in October 2011. The evidence reveals that there was only one petition heard at this open forum; that of the women's equestrian club petitioning for varsity status. The equestrian club reported at the forum an increase from 19 members in 2008 to currently having an "average of 30 members," including having practice and horse facilities, established annual fundraising and budget, and seven established competitions for the 2011-2012 school year. The committee who reviewed the October 2011 open forum equestrian petition noted in their report that only 32 of 1943 respondents of the recent I&A survey results indicated an interest in equestrian (.016% of survey respondents).

Prior to OCR concluding its investigation, including analyzing levels of competition, and making an investigative finding, LSU expressed an interest to resolve the compliance issues identified during the course of the investigation. OCR determined it was appropriate to resolve the compliance review during the investigation and LSU subsequently committed to the enclosed voluntary Agreement which, when fully implemented, will resolve the identified issues of the compliance review. The provisions of the Agreement are aligned with the legal issues of the compliance review and the information obtained during OCR's investigation, and are consistent with the applicable Title regulations and OCR policy.

LSU has chosen to demonstrate compliance with the applicable Title IX regulation by taking the specific actions set forth in the Agreement to evidence that the University is providing opportunities for financial assistance to members of both sexes in proportion to the participation rate of men and women in the intercollegiate athletics program, and that the selection of sports and levels of competition at the University effectively accommodate the athletic interests and abilities of members of both sexes. Specifically, LSU has committed to either demonstrating to OCR that equal opportunities were provided in awarding athletic scholarships to male and female athletes during the 2011-2012 academic year or by submitting a detailed plan to ensure that, by the beginning of the 2014-2015 academic year, the University is in full compliance with its Title IX obligation to provide athletic scholarships in a nondiscriminatory manner. The Agreement requires LSU to identify all legitimate, nondiscriminatory factors that may explain the disparities in athletic scholarships awarded to male and female athletes. Such factors may include LSU's efforts to comply with Title IX participation requirements by, for example, phasing-in scholarships to build new teams for women quickly. In addition, LSU must demonstrate to OCR that it is either accommodating

effectively the interests and abilities of both sexes by meeting Part 1, Part 2, or Part 3 of the three-part test or by submitting a detailed plan to OCR to ensure compliance by the 2014-15 academic year, including the interim steps the University will take during the 2012-2013 and 2013-2014 academic years to increase athletic participation opportunities for female students, including by adding new teams and/or expanding the opportunities to participate in sports currently offered.

OCR will monitor LSU's implementation of the Agreement. If the University fails to implement the Agreement, we may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

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. This letter is not intended, nor should it be construed, to cover any other matters that may exist or were not specifically discussed herein.

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

Thank you for the cooperation extended by you and your staff to resolve the compliance review. If you have any questions about this matter, please contact Dana K. McKenna, Senior Equal Opportunity Specialist, at 214-661-9639. We look forward to working with LSU in implementing the Agreement.

Sincerely,

/s/

Taylor D. August
Director, OCR Dallas Office

Enclosure

cc: Mr. Bob Barton, Attorney for LSU: bob.barton@taylorporter.com
Ms. Miriam Segar, LSU Sr. Associate Athletics Director/SWA: msegar@lsu.edu