

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921



Rev. Philip L. Boroughs, S.J.
Office of the President
College of the Holy Cross
1 College Street
Worcester, Massachusetts 01610

Re: Complaint No. 01-11-2050

Dear President Boroughs:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is closing the investigation of the above-referenced complaint against College of the Holy Cross (College) because the College has agreed to voluntarily resolve the allegations on terms that OCR has found to be acceptable, as explained further below. By entering into the enclosed Voluntary Resolution Agreement with OCR, the College makes no admission or acknowledgment that it has violated Title IX, any other laws that OCR enforces, or any other Federal or State law.

The Complainant in this matter alleged that the College discriminates against female students on the basis of sex by offering unequal services and facilities for female student-athletes in the softball program as compared to the male student-athletes in the baseball program. Specifically, the Complainant alleged that the College provides fewer coaching staff positions for the softball team, as compared both to the College's baseball team, and to other softball teams in the College's competitive league. The Complainant also alleged that the team's quality of coaching is adversely impacted by the College's failure to retain experienced and knowledgeable coaching staff due to low pay. The Complainant further alleged that the College provides the women's softball team with fewer or lower-quality facilities, such as fields and locker rooms, than it provides to the men's baseball team.

OCR opened this complaint pursuant to our enforcement authority under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation found at 34 C.F.R. Part 106 (Title IX). Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance, including athletic programs. As a recipient of Federal financial assistance from the U.S. Department of Education, the College is subject to Title IX.

Based on the allegations raised, OCR investigated whether the College is discriminating against women in the provision of athletic benefits, opportunities and services, in violation of 34 C.F.R. Section 106.41(a) and (c).

Legal Standard

Equal opportunities in intercollegiate athletic programs are addressed in the Title IX implementing regulation at 34 C.F.R. Section 106.41(c). This provision details a number of components to be considered in determining whether a recipient is offering equal opportunities to male and female athletes, including, among others, the opportunity to receive coaching, the assignment and compensation of coaches, and the provision of locker rooms, practice and competitive facilities.

To assess compliance in the component areas, OCR examines the specific factors outlined in OCR's 1979 Policy Interpretation, found at Federal Register, Vol.44, No. 239. (See <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.) With respect to the opportunity to receive coaching, OCR specifically examines the relative availability of full-time, part-time and assistant coaches and graduate assistants. With respect to the assignment and compensation of coaches, OCR looks at whether compensation or assignment policies or practices affect the quality, nature, or availability of coaching. Regarding assignment of coaches, OCR will consider training, experience, and other professional qualifications, as well as professional standing. Regarding compensation, OCR will consider the rate of compensation (per sport, per season); duration of contracts; conditions relating to contract renewal; experience; the nature of coaching duties performed; working conditions; and other terms and conditions of employment. With respect to locker rooms, practice and competitive facilities, OCR will examine the quality and availability of the facilities provided for practice and competitive events; the exclusivity of use of facilities provided for practice and competitive events; the availability and quality of locker rooms; and the maintenance and preparation of practice and competitive facilities.

In examining the components of the women's and men's programs, OCR does not look for identical benefits, opportunities or treatment; instead, OCR considers whether, overall, the athletics program provides equivalent benefits to male and female athletes. If OCR identifies disparities in any of the program components that are not offset by other benefits, are not merely negligible, and are not the result of legitimate, non-discriminatory factors, OCR will consider whether the disparities denied an equal opportunity to athletes of the underrepresented gender.

OCR's Preliminary Investigation

In investigating this complaint, OCR reviewed documentation provided by the College regarding every component of the College's athletics program. OCR's initial investigation focused on the provision of coaching services and quality of the facilities provided for each sport. OCR also interviewed several members of the athletics department, including the College's Athletics Director and the head coach for the softball team, and conducted an on-site inspection of the College's fields and facilities.

At the conclusion of OCR's initial on-site visit, the College's representative requested to resolve the complaint through a voluntary resolution agreement. To resolve the complaint, the College indicated that it plans to incorporate a self-assessment and corrective action plan for gender inequity in its athletics program. Additionally, recognizing that broad remedies require long-term efforts, the College further proposed to immediately begin to address the inequity between

the baseball and softball teams through certain facilities upgrades to the softball field and additional scholarship opportunities provided for softball female student-athletes. The softball program will immediately benefit from these improvements, which were directly identified by the athletics director and the head softball coach (with input from the softball team) as necessary enhancements to make the College's softball program competitive. Further, although financial aid and assistance were not part of OCR's initial investigation, the College projects that in total it will award the equivalent of seven full scholarships for the softball program, which will enhance the program's competitiveness.

Terms of the Voluntary Resolution Agreement

On October 28, 2014, OCR received the College's signed Voluntary Resolution Agreement (Agreement), a copy of which is enclosed. Without admitting or acknowledging any violation of Title IX or any other State or Federal law, the College committed to the following:

1. The College will develop an athletics equity assessment plan to assess equity for male and female student-athletes in the College's athletics programs as a whole and ensure compliance with 34 C.F.R. Section 106.41(c) and OCR Policy Interpretation: Title IX and Intercollegiate Athletics (Dec. 11, 1979).
2. Based on the results of the equity assessment plan, the College will make the necessary improvements to its athletics program as a whole to ensure compliance with 34 C.F.R. Section 106.41(c).
3. Pending the results of its equity assessment plan and beyond any improvements to the softball program made in accordance with paragraph No. 2 above, the College will, at present, make the following improvements to the softball facilities:
 - a. Install a structure at the softball facility that will provide a space for each player to store jackets, warm-ups, gym bags, and other apparel and equipment items while she is performing at the facility;
 - b. Install the necessary pipes and irrigation equipment to allow for the frequent watering and maintenance of the softball field;
 - c. Install chain-link protective fencing in front of each dugout to enhance safety for student athletes viewing the softball games;
 - d. Acquire and install a new sound system at the softball facility to broadcast games and also play music in order to increase spectator and student athlete engagement with the games;
 - e. Replace the crushed stone dust surface of the infield and bullpen with a composite mixture of materials often used in other softball facilities in order to create a higher quality playing service that is less abrasive;
 - f. Add an artificial turf surface to the existing batting cage to ensure student safety and improve the quality of skill development during practices;

- g. Construct an additional batting cage that also includes the composite surface mentioned in 3.e., above. This cage will be located in the immediate vicinity of the softball field in order to be conveniently located for students during practices; and,
- h. Continue to address maintenance issues such as repairing or replacing parts of the backstop and the woodwork and roof of the dugouts, as necessary.

Furthermore, the College has added another part-time assistant coach position for the softball team bringing the total coaching staff to one FTE head coach and two 0.5 FTE assistant coaches, with increased pay for each. In January 2012, and again in July 2012, the College increased the head coach pay, and has indicated its intent to continue to increase the head coach's salary by at least twice the percentage rate given to other employees until such time as it substantially narrows the salary gap between the College and other institutions. In January 2013, the College doubled the assistant coach pay to bring it on par with the assistant coach compensation paid to baseball assistant coaches. The College has agreed to these improvements as an interim step, in addition to any other improvements ultimately necessary to ensure equivalent benefits for male and female student-athletes.

This concludes OCR's investigation of this complaint and should not be interpreted to address the College's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR's 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. Please be advised that the Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

As memorialized in the Agreement, OCR will monitor the College's compliance with the terms therein. OCR will close the monitoring of the Agreement and will notify the parties in writing, once we determine that the College has satisfied the terms of the Agreement. The College has agreed to provide OCR with its first monitoring report by January 30, 2015.

OCR would like to thank you and your staff – especially Special Assistant Jane Corr and General Counsel Vincent O'Rourke – for your cooperation throughout the investigation and resolution of this complaint. If you have any questions about this letter or the Agreement, please contact Civil Rights Attorney Ramzi Ajami at (617) 289-0086 or Ramzi.Ajami@ed.gov; or Team Leader/Civil Rights Attorney Jane López at (617) 289-0083 or Jane.Lopez@ed.gov. You may also contact me at (617) 289-0111.

Sincerely,

/s/ Joel J. Berner

Joel J. Berner
Regional Director

Enclosure

Cc: Vincent F. O'Rourke, Jr., General Counsel