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January 31, 2017

IN RESPONSE, PLEASE REFER TO: 03146002

Dr. Eli Capilouto
Office of the President
University of Kentucky
101 Main Building,
Lexington, KY 40506-0032

Dear President Capilouto:

This letter is to notify 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 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106.

The compliance review assessed whether the University of Kentucky (the University) provided male and female students an equal opportunity to participate in the University's intercollegiate athletic program by effectively accommodating their interests and abilities and 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. OCR's compliance review also examined whether the University provided equal athletic opportunities for male and female students with regard to the benefits and opportunities in all other aspects of the University's intercollegiate athletics program, as described below.

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. The University is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to conduct this compliance review under Title IX.

During the course of the investigation, OCR determined that the University was out of compliance relative to the following components of the University's intercollegiate athletics program: the effective accommodation of the interests and abilities of female athletes, and the proportionate provision of athletic financial assistance to men and women in the intercollegiate athletics program. On December 21, 2016, OCR entered into a resolution agreement (Agreement) with the University to resolve the noncompliance noted above. OCR found insufficient evidence of a violation of Title IX regarding the following components of the University's intercollegiate athletics program: the provision of equipment and supplies; locker room, practice and competitive facilities; scheduling of games and practice times; travel and per diem allowances; opportunity to receive tutoring and assignment and compensation of tutors;

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opportunity to receive coaching and assignment and compensation of coaches; medical and training facilities and services; housing and dining facilities and services; publicity; support services; and recruitment.

The University has agreed to provide data and other information during OCR's monitoring of the Agreement, and OCR may conduct additional visits and request additional information as necessary to determine whether the University has fulfilled the terms of the Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. §§ 106.37(c) and 106.41(c)(1), which was at issue in this compliance review.

OCR will not close the monitoring of the Agreement until it has determined that the University has complied with the terms of the Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. §§ 106.37(c) and 106.41(c)(1). Should the University fail to fully implement the Agreement and to provide data to OCR in order for OCR to determine compliance with the Agreement, OCR will take appropriate action to ensure the University's compliance with Title IX.

Background

The University is a public co-educational university in Lexington, Kentucky. As of academic year 2014-2015, the University reported that there were 20,690 full time undergraduate students enrolled; 9,857 (48%) male, and 10,833 (52%) female.

In academic year 2014-2015, the University's athletic program had 10 men's teams (Baseball, Basketball, Football, Golf, Soccer, Swimming, Tennis, Indoor Track, Outdoor Track, Cross Country), 11 women's teams (Softball, Basketball, Golf, Gymnastics, Soccer, Swimming, Tennis, Indoor Track, Outdoor Track, Cross Country and Volleyball) and 1 co-ed team (Rifle). The University is a member of the National Collegiate Athletic Association (NCAA) and competes at the Division I level as a member of the Southeastern Conference (SEC).

OCR initiated this compliance review during academic year 2013-2014. OCR's investigation included a comprehensive review and analysis of documents and other data pertinent to the compliance review issues. OCR conducted an onsite visit to the University in September 2015 to view athletic facilities. OCR also interviewed administrators responsible for the overall operation of the athletic program, and pertinent staff who are knowledgeable about the history, development and growth of the present athletic program. OCR also surveyed and conducted interviews with coaches and athletes from all women's and men's teams, and students, including athletes participating in intercollegiate, intramural, as well as club athletic programs.

Legal Standard

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, 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 the University provides 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.

OCR also examined whether the University provides 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.”

The regulation implementing Title IX also requires a recipient to provide equal athletic opportunities for members of both sexes in the provision of equipment and supplies (34 C.F.R. §106.41(c)(2)); travel and per diem allowance (34 C.F.R. § 106.41(c)(4)); scheduling of games and practice times (34 C.F.R. §106.41(c)(3)); opportunity to receive academic tutoring and assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); provision of locker rooms, practice and competitive facilities (34 C.F.R. §106.41(c)(7)); provision of medical and training facilities and services (34 C.F.R. § 106.41(c)(8)); provision of housing and dining facilities and services (34 C.F.R. § 106.41(c)(9)); provision of publicity (34 C.F.R. § 106.41(c)(10)); provision of support services (34 C.F.R. § 106.41(c)); and recruitment of student athletes (34 C.F.R. § 106.41(c)).

I. Accommodation of Interests and Abilities -- 34 C.F.R. § 106.41(c)(1)

OCR examined whether the University 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 applied the following “Three-Part Test” to determine whether the University provides equal opportunities to participate in its intercollegiate athletic program:

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

Part One: Substantially Proportionate Participation Opportunities

Under Part One of the Three-Part test, where an institution provides intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes.

To establish the number of intercollegiate athletic participation opportunities, OCR examined the eligibility lists prepared by the University for the 2012-2013, 2013-2014, and 2014-2015 school years. These lists were reviewed by OCR with University head coaches and other athletic program staff to ensure that the actual numbers of participants per team were counted correctly. For determining participation opportunities, athletes were counted once for each team for which they were eligible to compete.

According to data from the University, during the 2012-2013 school year, there were 20,436 students at the University. Female students comprised 10,323 (51%) of the total number of students, but comprised only 212 (37%) of the University's 566 athletes (based on OCR's review of the University's eligibility lists). For the 2013-2014 year, there were a total of 21,050 students at the University. Females comprised 10,791 (51%) of the total number of students, but comprised only 225 (36%) of the University's 622 athletes. For the 2014-15 school year, there were a total of 20,690 students at the University. Females comprised 10,833 (52%) of the total number of students, but comprised only 239 (38%) of the University's 625 athletes. In each of these three years, there has been at least a 14% difference between the participation rate of women in the University's athletics program and rate of women enrolled.

OCR does not require *exact* proportionality between participation and enrollment for the underrepresented sex, but *substantial* proportionality. OCR would consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team. OCR considered the average size of teams offered for the underrepresented sex, approximately 21 during the 2014-2015 school year and determined that the University would need to provide 175 additional athletic opportunities to the current athletic program for females to reach exact proportionality. For the 2013-14 school year, OCR determined that the University would need to provide 192 additional athletic opportunities to the athletic program for females to reach exact proportionality, which is well beyond the average team size of 21.

Given the rates of participation and enrollment for the 2012-2013, 2013-2014, and 2014-2015 academic school years, OCR determined that the University is not providing equivalent intercollegiate level participation opportunities for female students in numbers substantially proportionate to their enrollment. Therefore, OCR next considered whether the University could show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of women because women have been and are underrepresented among intercollegiate athletes at the University.

Part Two: History and Continuing Practice of Program Expansion

OCR considered whether the University 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 considers the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex: the current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams); the effective communication of the policy or procedure to students; and the current implementation of a plan of program expansion that is responsive to developing interests and abilities.

OCR's review of data from the University revealed that all of the current men's sports teams were competing at the intercollegiate level before 1940, with the exception of men's soccer which was added in 1991. Only one women's team, track, existed prior to the enactment of Title IX. In the mid-1970s, five women's teams were added. In 1983, women's intercollegiate swimming began play; and two additional women's teams were added in the 1990's. No women's team has been added since 1997. There has been no reported elimination of a women's intercollegiate athletic team in the last ten years. According to University officials, there have been had no formal requests for a new sport.

OCR also looked to see whether any current practices exist that support continued expansion. The University provided a copy of its Gender Equity Plan (the Plan) which is undated, but was in use prior to the creation of softball in 1997. The Plan reports that each fall, the Club Sports Review Committee meets to evaluate women's club sports to determine the feasibility of adding one of these sports at the varsity level. However, no evidence exists that the Committee continued to meet after 1997. OCR found no evidence that the University has a current policy or procedure for specifically requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of such policy or procedure to students. Moreover, when interviewed, the current Club Sports Director was unaware that the University assesses athletic interests annually.

OCR has determined that the University has not added or elevated an intercollegiate women's athletic team in 19 years, its participation numbers have not meaningfully increased between 2012-13 and 2014-15, nor does it have a formal process currently in place for requesting and adding a new sport. Thus, OCR concluded that the University does not have a history and continuing practice of program expansion which was demonstrably responsive to the developing interests and abilities of women athletes.

Part Three: Effective Accommodation of Interest and Abilities

Even when an institution cannot demonstrate compliance with either parts one or two of the Three-Part Test, OCR may find the recipient in compliance through Part Three of the Three-Part

Test if an institution is fully and effectively accommodating the interests and abilities of the underrepresented sex through the current athletics program.

In determining compliance with Part Three of the three-part test, OCR considers whether: (a) there is an unmet interest in a particular sport; (b) there is sufficient ability to sustain a team in the sport; and (c) there is a reasonable expectation of competition for the team. OCR uses a broad range of indicators to make this determination, including: whether the institution uses nondiscriminatory methods of assessment when determining interests and abilities; the frequency of the institution's surveys/assessments; whether the institution's surveys/assessments have been used to eliminate viable teams; an evaluation of multiple indicators to assess interest; and an evaluation of multiple indicators to assess ability.

An institution may determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing provided: the processes take into account the nationally increasing levels of women's interests and abilities; the methods of determining interest and ability do not disadvantage the members of the underrepresented sex; the methods of determining ability take into account team performance records; and the methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

However, an institution may not rely on a survey alone, regardless of response rate, to determine whether it is fully and effectively accommodating the interests and abilities of its underrepresented students. With respect to the frequency of assessment, OCR's evaluation of whether an institution assesses interest and ability periodically so as to be able to identify any developing interests and abilities of the underrepresented sex in a timely and responsive manner takes several factors into account, including: the degree to which the previous assessment captured the interests and abilities of the institution's students and admitted students of the underrepresented sex; changes in demographics or student population at the institution (e.g. virtually complete student body turnover every four years at a typical four-year institution); and whether there have been complaints from the underrepresented sex with regard to a lack of athletic opportunities or requests for the addition of new teams.

OCR evaluates the interests of the underrepresented sex by examining multiple indicators, including: requests by students and admitted students that a particular sport be added; requests for the elevation of an existing club sport to intercollegiate status; participation in club or intramural sports; interviews with students, admitted students, coaches, administrators and others regarding interests in particular sports; results of surveys or questionnaires of students and admitted students regarding interest in particular sports; participation in interscholastic sports by admitted students; and participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students.

OCR also considers a range of indicators to assess whether there is sufficient ability among interested students of the underrepresented sex to sustain a team in the sport. When making this determination, OCR examines indicators such as: the athletic experience and accomplishments- in interscholastic, club or intramural competition of underrepresented students and admitted students interested in playing the sport; opinions of coaches, administrators, and athletes at the institution regarding whether interested students and admitted students have the potential to sustain an intercollegiate team; and if the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team.

Two factors must be considered to assess whether the quality of competition provided to male and female athletes equally reflects their abilities. Those factors are:

- (1) Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities; or
- (2) Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes that sex.

The Southeastern Conference (SEC), to which the University belongs, consists of fourteen participating schools and offers the following intercollegiate sports for women: basketball; cross-country; equestrian; golf; gymnastics; soccer; softball; swimming and diving; tennis; track and field; and volleyball. A review of the sports programs offered by the University and the sports programs offered by the conference reveals Women's Equestrian is the only intercollegiate sports program not currently being offered by the University. All teams at the University, both male and female, compete at the NCAA Division I level. The University does not offer junior varsity sports teams, male or female.

OCR determined that the University's primary means of assessing athletic interest are its freshman surveys. Since approximately 2004, the University has administered the freshmen survey during summer advising sessions. The survey was converted to an online questionnaire in 2013. Students who do not complete the survey are sent email reminders. Staff on the Advanced Analytics team analyze results, and findings are sent to the Athletic Department. The University provided copies of the survey and results for the following academic school years: 2006-2007; 2007-2008; 2010-2011; 2011-2012; 2012-2013; 2013-2014; and 2014-2015. However, the University reported an error in the administration of the summer 2012 survey which resulted in some of the responses being unreadable. Therefore, OCR is unable to analyze the results from 2012.

OCR reviewed the 2011, 2013, and 2014 freshmen surveys, and noted that the survey gauged interest in 17 sports/activities, 13 of which are currently offered by the University. The survey states that it is being conducted to determine the athletic interests and abilities of first-year students. It does not provide any telephone or email contact information, in the event a student wants to follow-up regarding the survey. Students can express one of four levels of interest, but there is no provision for students to provide additional information or comments about their interest, experience or ability or about sports not listed on the survey. For students who did not complete the survey when they were first invited, the University stated it sent email reminders.

A review of the 2011, 2013 and 2014 survey results indicate some level of interest among women in sports not currently offered by the University, with a particularly strong interest in Equestrian. OCR notes that during the 2014-2015 academic year, 71 women participated in the four clubs involving Equestrian activities, 21 women participated in the Field Hockey Club, and 23 women participated in the Lacrosse Club; during the 2013-2014 academic year, 52 women participated in the three clubs involving Equestrian activities, 18 women participated in the Field Hockey Club, and 25 women participated in the Lacrosse Club.

Women's Equestrian is the only intercollegiate sports program that the University does not offer but which is offered by other schools within the Southeastern Conference (SEC), of which the University is a member. The Executive Associate Athletic Director stated that the University will occasionally receive a call inquiring about the creation of an equestrian team; however, the University determined that there is not enough interest and ability to field a Division 1 team.

In addition to reviewing this data, OCR interviewed five University administrators to ascertain their opinions as to whether the University's athletic program fully and effectively accommodates the interest and abilities of its participants. All interviewees reported that the current athletic program at the University was fully and effectively accommodating the interest and abilities of all of its participants, including women. Head and assistant coaches of the various athletic programs at the University surveyed by OCR also reported that the current athletic program at the University was fully and effectively accommodating the interest and abilities all of its participants.

OCR interviewed intercollegiate athletes representing all men's and women's athletic programs offered at the University. During interviews, some athletes responded that they are aware of sports in which there might be interest but are not currently offered at the University, specifically Equestrian and Men's and Women's Rugby. Students who responded to OCR's survey were not aware of any sport in which there is interest but not currently offered. None of the groups were aware of any unsuccessful attempts by student groups, university officials, or others to add additional sports.

OCR also interviewed the administrators for club/intramural sports. Two reported that they are aware of a few parents requesting that a club or intramural sport be elevated to a varsity sport, specifically Lacrosse and Equestrian. None of the club/intramural administrators is aware of a process in which sports can be elevated to varsity status nor are they aware of how the sports interest survey results are used. Several administrators were not aware that a survey is conducted.

OCR also interviewed the Athletic Director and several associates. Most administrators reported that they felt that the current offering of sport programs at the University fully and effectively accommodate the interests and abilities of all students, although two admitted some interest in Equestrian, Field Hockey, and Lacrosse becoming a varsity team. The University offers 45 club sports and 27 intramural sports. One administrator reported that, in 2004 or 2005, he discussed the possibility of elevating Equestrian and Field Hockey to a varsity sport. However, he was not aware of any further steps taken.

OCR also interviewed approximately 20 female athletes who represent the University's intramural and club sport athletes. Several reported that the University's current offering of sports programs does not fully and effectively accommodate the interests and abilities of all students. Several expressed interest in elevating Equestrian, Field Hockey, and Lacrosse to a varsity sport. Approximately half of the students interviewed could not remember whether they participated in a sports interest survey, and all interviewed were not aware of the process used to elevate a club or intramural sport to varsity status.

Conclusion

In summary, OCR found that the University did not provide participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments during the 2012-2013, 2013-2014, and 2014-2015 academic years. Women were, and continue to be, underrepresented in the intercollegiate athletics program when compared to their representation in the student population. OCR further found that the evidence did not reveal a history and continuing practice of intercollegiate athletic program expansion responsive to the developing interests and abilities of female students.

With respect to whether the University can demonstrate that the interests and abilities of the underrepresented sex (female students) have been fully and effectively accommodated by the present program, OCR reviewed relevant policies and procedures, as well as documentation provided by the University and survey responses from both the University staff and students to determine whether the University uses nondiscriminatory methods of assessment when determining the athletic interest and abilities of its students. OCR determined that no female (the underrepresented sex) sports program has been eliminated by the University.

OCR determined that the University conducts assessments of student interest on an annual basis during freshman summer advising, however, these assessments do not assess or even attempt to assess the total undergraduate student population. The assessments merely assess a sample of the student undergraduate population (i.e., Entering Freshmen Survey). These assessments also fail to follow OCR guidance in other respects, such as failing to allow students who did not previously play sports during high school and students who have received an athletic scholarship to complete the survey, limiting students to provide additional information or comments about their interest, experience, and ability in only certain sports not offered by the University, and failing to request contact information. The University provided copies of questionnaires which request an athlete hand in the survey to the session leader if they answered yes to receiving an athletic scholarship or no to playing a sport in high school. We also note that the University does not have other mechanisms in place to assess the interests and abilities of female athletes. The University will address these in the implementation of the attached Agreement.

II. Athletic Financial Assistance (AFA) – 34 C.F.R. §106.37(c)

The Title IX regulation at 34 C.F.R. §106.37 (c) requires that a university provide reasonable opportunities for athletic scholarship awards for members of each sex in proportion to the number of students of each sex participating in its intercollegiate athletics program. The Policy Interpretation provides that OCR will examine compliance primarily by means of a financial comparison to determine whether the total amounts of financial assistance (scholarship aid) available to men's and women's athletic programs is substantially proportionate to their respective participation rates. To assess this, OCR divides the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and compares the results. The analysis is conducted on a case-by-case basis, but 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 (such as differences in in-state vs. out-of-state tuition at public institutions, as long as out-of-state scholarships are not disproportionately limited to one sex; or reasonable professional decisions concerning awards necessary for program development) that the institution can demonstrate are reasonable and do not reflect underlying discrimination.

After taking into account any legitimate, nondiscriminatory explanations demonstrated by the institution, if there is an unexplained disparity in the athletic financial assistance budget favoring either sex, OCR will presume that such disparity is reasonable and based on legitimate and nondiscriminatory reasons if: 1) the disparity is one percent or less for the entire athletic scholarship budget; or 2) the disparity is greater than one percent, but no greater than the value of one full scholarship. For example, if men are 60% of the athletes, OCR would expect that the men’s athletic scholarship budget would be within 59% to 61% of the total budget for athletic scholarships for all athletes. For those colleges or universities where one percent of the entire athletic scholarship is less than the value of one full scholarship, OCR will presume that a disparity up to the value of one full scholarship is equitable and nondiscriminatory. However, even if an institution consistently has a less than one percent disparity, the presumption of compliance with the Title IX regulation might still be rebutted if there is direct evidence of discriminatory intent.

To ascertain compliance with this component, OCR first reviewed the University’s Enrollment Management Student-Athlete Procedures for awarding athletic financial assistance to athletes. A review of this policy revealed that the criteria for awarding aid to both male and female athletes is the same in accordance with applicable state and institutional guidelines and the National Collegiate Athletic Association (NCAA), and is handled through the University’s Office of Student Financial Aid.

Next, OCR reviewed the participation rates for athletes. 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). During the 2012-13 year, the University reported unduplicated participation rates of 174 female athletes and 310 male athletes, for a total of 484 student athletes. Thus, for 2012-13, 37.5% of athletes were female and 62.5% of athletes were male. After reviewing the amounts of financial aid awarded by the University, as submitted to OCR, the comparisons regarding the financial aid for both male and female athletes are as follows:

| Total amount of athletic financial assistance for 2012-13: \$7,327,480.50 | | |
|--|---------------|---------------|
| | Women | Men |
| Financial Aid % for 2012-13: | 42.00% | 58.00% |
| Athletic Participation Rates: | 37.50% | 62.50% |
| Difference: | 4.50% | -4.50% |

| Total amount of athletic financial assistance for 2013-14: \$7,503,982.50 | | |
|--|---------------|---------------|
| | Women | Men |
| Financial Aid % for 2013-14: | 42.00% | 58.00% |
| Athletic Participation Rates: | 36.00% | 64.00% |
| Difference: | 6.00% | -6.00% |

| Total amount of athletic financial assistance for 2014-15: \$8,151,148.00 | | |
|--|---------------|---------------|
| | Women | Men |
| Financial Aid % for 2012-13: | 42.40% | 57.60% |
| Athletic Participation Rates: | 37.00% | 63.00% |
| Difference: | 5.40% | -5.40% |

OCR interviewed an administrator who stated the University maximizes the amount of NCAA allowable scholarships to all athletes and informed OCR that they must do this to recruit the best female athletes. Because the University is located in the coldest climate of the SEC schools, if they do not provide the maximum allowable scholarships, they are more likely to lose female athletes to warmer weather institutions in the SEC. This was confirmed by the Softball coach who added that weather has a negative effect on recruiting.

Conclusion

OCR determined that the provision of AFA is not substantially proportionate to the athletic participation rates of men and women. Specifically, the disparity was in favor of women as follows: 4.5% (2012-13), 6.0% (2013-14), and 5.4% (2014-15). As discussed, the University’s policy regarding awarding athletic financial assistance to athletes is neutral on its face and the same criteria is applied for awarding aid to both male and female athletes. Additionally, University officials reported to OCR that out of state athletes account for 67.3% of female athletes and 68.2% of male athletes. The University did not provide a legitimate, nondiscriminatory reason for the disparity. Therefore, OCR has determined the University is not in compliance with 34 C.F.R. 106.37 (c).

III. Other Athletic Benefits and Opportunities

In ensuring compliance with Title IX, OCR examined the following components of the University’s program to ensure that it was providing an equal opportunity for members of both sexes to benefit from its intercollegiate athletics program, in accord with 34 C.F.R. § 106.41(a) and (c). OCR specifically examined the following areas:

1. Equipment and supplies, in accord with 34 C.F.R. § 106.41(c)(2);
2. Scheduling of games and practice times, in accord with 34 C.F.R. § 106.41(c)(3);
3. Travel and per diem, in accord with 34 C.F.R. § 106.41(c)(4);
4. Opportunity to receive academic tutoring and assignment and compensation of tutors, in accord with 34 C.F.R. § 106.41(c)(5) & (6);
5. Opportunity to receive coaching and in the assignment and compensation of coaches, in accord with 34 C.F.R. §106.41(c) (5) & (6);
6. Provision of locker rooms, practice facilities, and competition facilities, in accord with 34 C.F.R. § 106.41 (c)(7);
7. Provision of medical and training facilities and services, in accord with 34 C.F.R. §106.41(c)(8);
8. Provision of housing and dining facilities and services, in accord with 34 C.F.R. § 106.41(c)(9);
9. Publicity, in accord with 34 C.F.R. § 106.41(c)(10);
10. Support Services, in accord with 34 C.F.R. § 106.41(c); and,

11. Recruitment of Student Athletes, in accord with 34 C.F.R. § 106.41(c).

In examining each program component, OCR examines whether the same or similar benefits or services are provided for all students or, if not, whether the differences negatively affect students of one sex, resulting in a “disparity.” When disparities are identified between the men’s and the women’s teams, *e.g.*, if a men’s team received a superior benefit in some way, OCR considers whether the benefit provided to the men’s program was offset by an unmatched benefit to any of the teams in the women’s program. In making this “program-wide” comparison, and before OCR concludes that a benefit to one of the teams in the women’s program offsets a benefit provided to one of the teams in the men’s program, OCR considers whether the offsetting benefits were equivalent or equal in effect. OCR only finds the benefit offsetting if it had the same or a similar effect on the student-athlete(s) or team within this program component.

Once OCR identifies disparities, and if it finds no evidence of offsetting, OCR considers whether the differences between the benefits provided to the men’s and women’s programs are negligible. Where the disparities are not negligible, OCR examines whether they were the result of legitimate, nondiscriminatory factors. If OCR finds no legitimate, nondiscriminatory reasons for the disparities, OCR then determines whether the identified 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 the program component were substantial enough by themselves to deny equal athletic opportunity. The result of this comparison is not to ensure identical benefits, opportunities, or treatment, but rather, to ensure that, overall, the athletics program provided equivalent benefits to men and women.

1. Equipment and Supplies - 34 C.F.R. § 106.41(c)(2)

Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight training equipment. In assessing compliance with this component, OCR considers the: (1) quality (2) amount, (3) suitability (4) the availability of equipment and supplies and (5) maintenance and replacement policies and practices of the institution regarding equipment and supplies.

Quality

As part of this investigation, OCR surveyed and interviewed coaches and student athletes for every men’s and women’s team and inspected all of the equipment and supplies provided to each men’s and women’s teams to determine whether any significant disparities existed regarding the equipment and supplies provided to the women’s teams and the men’s teams.

All coaches rated equipment and supplies as Excellent. Some student athletes on the men’s swim team and women’s tennis team provided OCR with assessments that differ from their coach, rating their equipment and supplies as good or average. OCR’s onsite visit confirmed the quality of the equipment and supplies for all of the teams was Good. All of the teams received relatively equal caliber equipment and there were no substantiated concerns from athletes or coaches that equipment or supplies were purchased or distributed by the University in an unequal manner between the men’s and women’s teams in any sport.

Amount

All coaches and players stated the amount of equipment and supplies provided were Excellent; all of the coaches stated that there are no problems with equipment and supplies.

Suitability

There were no coach or player concerns raised to OCR and all agreed that all equipment was regulation for the sport.

Availability

The athletes and coaches for all teams stated that the equipment and supplies for their team were handled by equipment managers and no concerns were raised.

Maintenance and Replacement

Regarding maintenance and replacement policies and practices, OCR examined whether teams were provided with maintenance services, such as laundry, as well as replacement schedules. Coaches and athletes confirmed equipment managers launder uniforms for all teams except Men's Golf, Men's and Women's Tennis, Men's and Women's Swimming, and Gymnastics practice leotards. The Golf Women's coach washes the team's uniforms after each tournament, as is her preference.

The University has a policy to replace damaged equipment if a coach or equipment manager determines an item to be damaged and no longer usable, the item may be exchanged for a new, comparable item. The damaged item must be returned to the coach or equipment department representative and be noted on the electronic inventory system or an Item Issue form before the new item can be issued. All athletes receive at least one new uniform every year. Replacement schedule for other equipment items may vary according to coaches and type of equipment, ranging from as needed to yearly or every two years.

Very few items are purchased by athletes. Swimming athletes pay for a parka if they want one and, while goggles are available, athletes generally purchase goggles they prefer. Men's and Women's Golf reported that each athlete purchases his or her own initial set of golf clubs.

Conclusion

Based on interviews, surveys and OCR's on-site concerning the quality, suitability, amount, maintenance and replacement, and availability of the uniforms, sport-specific equipment and general equipment to the men's and women's teams, OCR found that equipment and supplies are provided to the men's and women's teams in an equivalent manner at the University. Therefore, OCR has determined the University is in compliance with this component.

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

In assessing compliance with this component, OCR considers the number of competitive events per sport, the time of day that competitive events and practice opportunities are scheduled, the number and length of practice opportunities, and the opportunities to engage in pre-season and post-season competition.

Number of Competitive Events

OCR considers the total number of competitive events provided for each intercollegiate athletics team, and compared the number of competitive events among similar sports as well as the number of competitive events allowed under NCAA guidelines for each sport.

When comparing the number of competitive events scheduled for each of the University's teams to the number of competitive events permitted per NCAA guidelines for the sport, OCR determined that for the 2013 – 14 season the University is offering equivalent opportunities to male and female athletes. On average, both men's and women's teams are competing at about the same percentage (96% for men and 97% for women) of the NCAA maximum allowable contests permitted per sport under NCAA guidelines.

Among other similar men's and women's teams, Men's and Women's Soccer as well as Men's and Women's Tennis, both competed in the maximum number of games allowed.

None of the coaches and athletes surveyed by OCR expressed any concern regarding the number of competitive opportunities available for their team. OCR found that any differences in the number of competitive events between male and female sports were negligible or explained by a legitimate, nondiscriminatory reason. Accordingly, OCR determined there is insufficient evidence to find that the University is not providing equivalent opportunities regarding opportunities to engage in competition for male and female athletes.

Number, Length, and Time of Day of Practice Opportunities

Data received from the University indicates that all men's and women's teams have regularly scheduled in-season practices. While the length and time of day for practices varies by team, OCR found the number and length of practices for men's and women's teams are comparable. Coaches and athletes surveyed by OCR reported that the number and length of practice sessions are sufficient and optimal, and in accordance to NCAA rules.

The time of day teams practice also varies by team and by semester and according to academic schedules. The following teams reported occasional conflicts with practices, other than class availability: Men's Soccer prefers to practice mid-morning, however, conflicts may occur due to class availability and the Women's Soccer schedule. One Men's Golf coach noted practicing at preferable times are dependent upon athletes' tutoring sessions. Women's Basketball noted that practice has been moved to locations other than Memorial Coliseum due to a NCAA Women's Volleyball tournament.

Overall, OCR determined that the University is providing equivalent opportunities to male and female athletes regarding the number, length, and time of day of practice opportunities.

Time of Day that Competitive Events are Scheduled

OCR also reviewed the time of day competitive events are scheduled. The times of competitive events were found to be equivalent for both the men's and women's teams, with all teams playing at the usual and appropriate times for their sport. Some athletes interviewed by OCR reported that they may occasionally miss some classes when the team travels, however, teachers are made aware in advance.

Surveys with coaches and athletes indicate that equivalent opportunity for competitive event times are provided to male and female athletes, with virtually all reporting that they do compete during "prime time" for their sport and are provided reasonable opportunities to compete before an audience.

Pre-and Post-Season Competition

OCR also reviewed the opportunities provided to male and female athletes to engage in pre- and

post-season competition. During 2013-14, the following the University sports teams reported engaging in pre-season competition: Men's and Women's Basketball, Men's and Women's Soccer, Women's Softball, Men's and Women's Tennis, and Women's Volleyball. Accordingly, five women's teams and three men's team competed in pre-season competition in 2013-14. According to University coaches and athletes, no team or individual athlete who has qualified for post-season competition has been denied the opportunity to participate. From 2013-14, the following teams have represented the University in post-season competition, either by team or in individual events: Baseball, Men's and Women's Basketball, Women's Cross Country, Men's and Women's Golf, Men's and Women's Tennis, Women's Soccer, Softball, Men's and Women's Swimming and Diving, Men's and Women's Indoor and Outdoor Track and Field, and Volleyball. Accordingly, a total of 11 women's teams and seven men's teams have competed in post-season competition, and no coach or athlete reported to OCR that they have not been permitted to engage in post-season competition despite qualifying for such competition.

Overall, OCR found that the University is providing equivalent opportunities for male and female athletes to compete in pre- and post-season competition, and any differences between the numbers of male and female teams competing in pre- and post-season competition were negligible.

Conclusion

OCR determined that the University is providing equivalent benefits and opportunities to female and male athletes in the number of competitive events per sport, the time of day that competitive and practice opportunities are scheduled, the number and length of practice opportunities, and the opportunities to engage in pre-season and post-season competition and is in compliance with this component.

3. Travel and Per Diem Allowance - 34 C.F.R. § 106.41(c)(4)

In assessing compliance in this area, OCR considered modes of transportation, housing and dining arrangements furnished during travel, length of stay before and after competitive events, and per diem allowances for the 2013-2014 school year. OCR examined the University's Team Travel policy related to travel and per diem ("Policy") and travel budget worksheets. In addition, OCR conducted interviews with University employees and also interviewed and surveyed coaches and student athletes related to travel and per diem.

Modes of Transportation

According to the Policy, the most economical and direct method should be used when choosing transportation. Transportation is provided via charter bus, motor pool vehicles, UK athletic bus, rented vehicles, and air. Airline transportation is used with approval of the team's sport liaison and must be arranged in advance with the approved travel agent.

All teams used airline transportation at least once. Most teams utilized commercial flights. Charter flights were utilized only by Men's and Women's Basketball and Football to travel for away games. Men's Basketball used charter flights exclusively to travel, no matter where the destination. Women's Basketball used charter flights with the exception of two away events, approximately four hours away, in which bus transportation was used. Football used charter flights for three of its away events and used bus transportation for the remaining two of its away events which were closer.

Most teams used charter buses to attend away events. With the exception of Men's and Women's Basketball, coaches overwhelmingly stated that buses are utilized if the location is within six hours and planes are utilized when the location is farther. Teams with fewer athletes (Men's and Women's Cross Country, Men's and Women's Golf, and Men's and Women's Tennis) sometimes used University vans. OCR found that men's and women's teams traveling to the same city used the same mode of transportation.

In examining the evidence, OCR is unable to ascertain a pattern of disparity favoring one gender over the other related to this factor. The type of transportation services provided were equivalent for men's and women's teams.

Housing Furnished During Travel

OCR found men's and women's teams generally stayed at moderately priced hotels of similar quality, i.e. Marriott, Holiday Inn, Hampton Inn or Hilton. However, Men's Basketball reported also staying at Loews hotels, and spent amounts ranging from \$10,000 to \$15,000 on one night's lodging. University officials reported that due to traveling with police and security personnel to cover crowd control and the safety of the players, additional compliance and publicity staff to accommodate media volume, doctors, and managers causes an increase in lodging at away events. Also, due to crowd control and a late night game start time, Men's Basketball may stay in a hotel past check out time depending on game time or departure time to ensure the athletes' safety, increasing the amount paid for lodging. Expenses are also increased because the University invites top donors and sponsors to travel with the team. The University reported that these individuals traveling with the team do not benefit the athletes per se but are a by-product of the marketing and fund-raising efforts of the athletic department.

Under this part, OCR also examined the number of athletes assigned per room. While the University Policy is silent on the number of athletes in a room, coaches and students informed OCR that two athletes are assigned to each hotel room. However, Women's Golf noted that three women had generally been assigned per room due to budget concerns but that next season only two athletes would be assigned per room. Women's Soccer noted that sometimes three women will be assigned to a room but only to avoid one athlete staying in a room alone.

Accordingly, in examining this factor, OCR found on average two athletes were assigned per room for the men's and women's teams and there was not an apparent pattern favoring one gender more than the other.

Length of Stay before and after Competitive Events

OCR found that men's and women's teams generally arrived the day before an away event in order to practice at the facility and get a good night's rest prior to competition. OCR found a similar pattern between men's and women's teams.

Per Diem Allowance

The Team Travel Policy provides that student-athletes may be provided with per diem meal allowance not to exceed \$40.00 per day (i.e., \$7.00- breakfast, \$10.00- lunch and \$23.00- dinner). During the day of competition, it is permissible to provide athletes with a snack. When money is given in lieu of a provided snack, the maximum amount allowed is \$15 and is available to athletes only. The Policy also permits coaches to arrange for sit-down meals in lieu of giving a meal allowance. No athlete reported that per diem given was insufficient.

OCR examined the per diem allowance for each team. Coaches reported that no team exceeded per diem, however, per diem allowance was very rarely used as coaches reported that teams overwhelmingly ate as a group and the coach paid the bill.

Dining Arrangements

When traveling, OCR found the men's and women's teams were provided with similar dining arrangements. The coaches for all teams informed OCR their teams ate in groups and ate at buffets, cafeteria style restaurants or moderate quality restaurants, whereas Men's and Women's Basketball more often eat at the hotel restaurant. The athletes for these teams confirmed the same.

Conclusion

OCR found that both men's and women's teams used similar modes of transportation when traveling to similar destinations and spent similar amounts on lodging and meals with like-sized teams. Both men's and women's teams stayed in similar hotels and ate in comparable restaurants. There was a significant variation in the amount spent on Men's Basketball, however, that was due to a non-discriminatory reason, including the high profile nature of the team, crowd control and a larger traveling party including security personnel, which is needed to ensure the safety of the athletes and the fact that donors and sponsors travel with the team. Overall, the services provided were equivalent or equivalent in effect, such that there was no denial of equal athletic opportunity regarding this component.

4. Opportunity To Receive Academic Tutoring Assignment and Compensation of Tutors - 34 C.F.R. § 106.41(c)(5) & (6)

Compliance in the opportunity to receive academic tutoring and the assignment and compensation of tutors component is determined by examining the following factors: (1) Tutor Availability, including the availability of tutoring and procedures and criteria for obtaining tutorial assistance; (2) Tutor Qualifications and Experience, including tutor qualifications, and training, experience, and other qualifications; and (3) Rates of Pay and Employment Conditions, including, hourly rate of payment by nature of subjects tutored, pupil loads per tutoring season, tutor qualifications; experience; and other terms and conditions of employment.

For purposes of the analysis of the tutoring component, OCR considered data submitted by the University and collected data for both the 2012-2013 school year and the 2013-2014 school year that was available at the time of OCR's Compliance Review.

Availability

The University provides tutoring to its athletes through its Center for Academic and Tutorial Services (CATS). This free service is available to all University athletes, and no appointments are necessary. The website identifies the hours of operation and all athletes may make arrangements to use CATS resources during non-working hours.

The University reported to OCR that CATS arranges tutorial and other academic support services for any student athlete who needs these services, regardless of sex. The investigation revealed that student athletes are not required to locate or pay for tutors or any other academic support services. CATS 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.

According to the University, each year an attempt is made to provide tutoring for all of the subjects in which student athletes are enrolled. Tutors are assigned on an equal basis to male and female athletes and all teams have an academic advisor assigned to them. Academic advisors monitor freshman athletes and report academic progress to coaches. Midterm academic report providing information regarding the athlete's academic status is sent home to parents of monitored students. Athletes may still be monitored after their freshman year if the advisor or coach deems it appropriate.

The evidence revealed that tutoring services are available to students during all semesters. In addition, the CATS staff work as advocates for athletes and help athletes balance their academic responsibilities with their responsibilities as a participant in the University's intercollegiate athletics program.

OCR's investigation found that the University policies and procedures for availability of tutoring services are consistent for both academic school years considered for this analysis, with no changes noted in any procedures that would negatively impact athletes of one sex or the other. Academic advisors travel with both men's and women's teams depending on the day of competition and the length of time away from classes.

Surveys from both male and female athletes and all coaches confirmed that tutorial assistance was readily available at the University. OCR's investigation did not reveal any concerns expressed by coaches or athletes about the availability of tutoring services or concerns about the quality of tutoring provided by the University. Further, all athletes were aware of tutoring services and how to access them. None of the male or female athletes stated that their team had encountered any problems in receiving tutorial assistance.

Qualifications, Experience, Rates of Pay, and Employment Conditions

With respect to tutor qualifications, experience, rates of pay, and employment conditions, the University reported that tutors provided through CATS are undergraduate and graduate students, qualified teachers and professionals from the community. The evidence revealed that all undergraduate student tutors are paid the same rate of pay, an hourly rate of \$8.00, graduate student tutors are paid an hourly rate between \$10.00 and \$12.00 and non-student tutors/mentors are paid an hourly rate between \$10.00 and \$14.00. A review of the University's tutors revealed tutors are typically undergraduate and graduate students, with some individuals with graduate and doctoral degrees. The investigation found that a person interested in becoming a tutor must complete an application through UK Jobs, the University's online employment system and meet certain conditions of employment.

The evidence revealed that tutors are paid the same hourly rate regardless of the nature of the subjects tutored, but that rate of pay was dependent upon degree and experience level. The University reported that tutors work in one-on-one settings. OCR's investigation found that the University policies and procedures for qualifications, experience, rates of pay, and employment conditions for tutors are consistent for both academic school years considered for this analysis, with no changes noted in any tutoring employment procedures that would negatively impact athletes of one sex or the other.

Conclusion

OCR found no evidence of any disparities based on sex 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. OCR further found 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 CATS to male and female athletes.

The evidence revealed that female athletes were just as likely as male athletes to have access, and to utilize tutorial assistance. In addition, OCR found no evidence to suggest that the terms and conditions of employment of the tutors differed based on the sex of the athletes being tutored. Based on the analysis of the evidence, OCR concludes that the University is providing equivalent benefits, treatment, services and opportunities regarding this component.

5. Opportunity To Receive Coaching Assignment and Compensation of Coaches - 34 C.F.R. § 106.41(c)(5) & (6)

To determine whether equivalent athletic opportunities are provided with respect to the opportunity to receive coaching and assignment and compensation of coaches component, OCR examines three factors: :

- relative availability of full-time coaches
- relative availability of part-time and assistant coaches
- relative availability of graduate assistants

OCR assesses two factors in determining compliance for the assignment of coaches: (1) training, experience, and other professional qualifications; and (2) professional standing.

OCR assesses seven factors in determining compliance for the compensation of coaches: (1) rate of compensation (per sport, per season); (2) duration of contracts; (3) conditions relating to contract renewal; (4) experience; (5) nature of coaching duties performed; (6) working conditions; and (7) other terms and conditions of employment.

Availability of Coaches

For intercollegiate athletics programs, OCR's analysis of the availability of coaches consists of separating the women's from the men's program, determining the full-time equivalence (FTE) of coaches in each program, computing the ratio of the FTE of coaches to the number of participants in each program, and finally comparing the ratio between men's and women's programs to determine any inequity.

For the 2013-2014 school year, the University had a total of 70 coaches on their coaching staff. For purposes of OCR's analysis, however, Men's and Women's Swimming and Diving, Men's and Women's Track, and Rifle were excluded from the analysis as they coach a coed team or a combined team, i.e., the men's and women's teams have the same coaches and practice and compete at the same or similar times. Therefore, the total number of coaches examined by OCR is 49.

All head and assistant coaches are full time employees of the University, with a 100% coaching duties for a twelve (12) month calendar year. All coaches have the primary responsibilities of

coaching, which also includes administrative duties, recruitment, monitoring of academics, and other job related activities, i.e., fundraising, and public relations.

During the 2013-2014 school year, the University's athletic program consisted of the men's program with six (6) sports, six (6) head coaches and twenty six (26) assistant coaches and the women's program with seven (7) sports, seven (7) head coaches and seventeen (17) assistant coaches. OCR considered the differences in the number of available assistant coaches for the men and women programs. Baseball and Softball both have two full time assistant coaches. Both Men's and Women's Golf each have one assistant coach. Both Men's and Women's Soccer each have two assistant coaches. Both Men's and Women's Basketball have three assistant coaches. In addition, Football has ten full time assistant coaches. Each team has the maximum amount of coaches allowable under NCAA guidelines.

For 2013-2014, the total FTE of coaches for all sports in the women's program is 20 in comparison to the men's program, which had a total coaching FTE of 29 - a difference of 9, in favor of the men's program. The overall ratio of coaches to athletes for 2013-2014 men's teams is 1:13.69 (29 coaches to 397 athletes) and for women's teams it is 1:11.25 (20 coaches to 225 athletes). This is a slight difference of 2 athletes per coach favoring the women's teams.

Assignment of Coaches

The following information concerning coaches' training, experience, and other professional qualifications and standing was obtained from data collected and surveys with head coaches, assistant coaches, athletic program administrative officials, and documentation and information provided by the University. Both the University and the head coaches also provided information about their assistant coaches. OCR analyzed information provided by the University by each team coached, including education and coaching experience for 2012-2013 and 2013-2014.

Interviews with athletic staff officials reveal that coaches are selected based on whether the individual is a good fit for the University's culture and his/her desire to make the University their destination school. The Athletic Director reported that the number of coaches assigned to each team is determined by NCAA guidelines, the University's Human Resources policies, and state regulations for posting vacancies. The Athletic Director also reported that head coaches hire their own assistant coaches.

All coaches are full time employees of the University. For the 2013-2014 school year, the men's teams had a total of twenty-nine (29) coaching positions with coaching experience ranging from 2 years to 31 years, with an average of 12 years coaching experience per position. Comparably, the women's teams had twenty (20) coaching positions with experience ranging from 3 to 28 years, an average of 15 years coaching experience per position. The evidence reveals that for total coaching positions, there is a negligible difference of 3 years' experience, slightly favoring the women's sports.

For the 2012-2013 school year, the men's teams had a total of twenty-nine (29) coaching positions with coaching experience ranging from 1 to 30 years, with an average of 17 years coaching experience per position. Comparably, the women's teams had twenty (20) coaching positions with experience ranging from 2 to 27 years, an average of 14 years coaching experience per position. The evidence reveals that for total coaching positions, there is a negligible difference of 3 years' experience, slightly favoring the men's sports.

Based on the analysis of the evidence, OCR determined the difference of 3 years in favor of the women's program for 2013-2014 and a difference of 3 years in favor of the men's program for 2012-2013 does not indicate an inequality in effect for either the men's or women's athletic programs because OCR found no evidence that the University routinely assigned coaches of less experience or qualifications to any particular sports program over another. Interviews and surveys with student athletes revealed no concerns regarding the qualifications of its coaching staff, and the evidence shows that the women's and men's programs have comparable qualifications, education, and experience for their respective coaches.

Compensation of Coaches

In determining compliance for compensation of coaches, OCR examines the allocation of funds for coaching to the men and women's program including the rate of compensation, duration of contracts, conditions relating to contract renewal, experience, nature of coaching duties performed, working conditions, and other terms and conditions of employment.

OCR's investigation reveals that there are no written policies or procedures for determining coaching salaries; however, the Athletic Director determines the budget for coaches' salaries and considers "market rate", individual performance, seniority and competencies in the selection process.

For the 2012-2013 school year, OCR determined the total funds allocated for University coaching salaries was \$7,306,105. Of that, approximately \$5,063,775 (69%) was received for coaching men and \$2,242,330 (31%) was received for coaching women. OCR then considered the percentage of University athletes (566 total) by sex, and found that for 2012-2013, 354 male athletes made up 63% of athletes, while 212 female athletes made up 37% of athletes at the University.

The evidence reveals that the total compensation paid to head coaches in the men's program was \$1,446,275 and the women's program total was \$1,291,840, for a difference of \$154,435 in compensation favoring the men's program. The evidence further reveals that the assistant coaches' compensations were \$3,617,500 to \$950,490, favoring the men's over the women's program as well by a difference of \$2,667,010.

OCR determined the total funds allocated for the University's 2013-2014 coaching salaries and then compared the percentage of funds used for coaching of women and for coaching men. OCR found University spent approximately \$8,042,885 in total compensation to its coaching staff in 2013-2014. Of that, approximately \$5,530,088 (69%) was received for coaching men and \$2,512,797 (31%) was received for coaching women. OCR then considered the percentage of University athletes (622 total) by sex, and found that for 2013-2014, 397 male athletes made up 64% of athletes, while 225 female athletes made up 36% of athletes at the University. OCR found the proportion of the percentage were not equivalent to the proportion of male to female participants in the athletics program, with an advantage to coaches of male sports.

Based on the analysis of the compensation factor, OCR determined that football is the most significant difference impacting compensation favoring the men's program. Football has a large team (2012-2013: 123 student athletes; 2013-2014: 127 student athletes), which requires a large coaching staff, and consists of a total of ten coaches, with one head coach, and ten assistant coaches. As such, the salary of the head coach is significantly higher as reflective of the number of assistant coaches he supervises, as well as the salaries for each of the assistant coaches on his

staff. Based on this information, OCR determined that this difference is a result of nondiscriminatory factors regarding the nature of the sport of football.

OCR's analysis further determined compensation differences of coaching staff with respect to comparable sports (i.e., Men's and Women's Basketball, Men's Baseball and Women's Softball). OCR's investigation identified a difference in coaching salary between the Baseball and Softball head coaches for 2012-2013, with the Baseball coach receiving \$325,000, and the Softball coach receiving \$135,000, resulting in a difference of \$190,000, favoring Baseball. A comparable difference existed during the 2013-2014 school year, wherein the Baseball coach received \$340,000, compared to the Softball coach who received \$155,000, resulting in a difference of \$185,000, favoring Baseball. A comparable difference also existed between the Men's and Women's Basketball head coaching salaries for 2012-2013 with the men's coach receiving \$400,000 and the women's coach receiving \$575,000 and during 2013-2014, the men's coach received \$400,000 and the women's coach receiving \$725,000.

OCR's analysis of nondiscriminatory factors for these differences in compensation for comparable sports reveals both Basketball coaches have similar participant numbers on their respective teams, levels of competition, records of achievement, and educational levels and coaching experience. However, one nondiscriminatory factor of consideration impacting compensation differences is the comparison of Basketball coaching staff. The evidence reveals that the men's Basketball head coach receives substantially more in retention bonuses and media/endorsements. With regard to the Baseball and Softball head coach salary difference favoring Baseball, the analysis reveals differences wherein the Baseball coach has more years of experience and an increase of participants when compared to Softball (almost twice as many athletes). Also, the Baseball coach has been at the University longer, providing nondiscriminatory factors for the difference in salary.

Conclusion

OCR determined that with respect to availability of coaches, the 2013-2014 coaching ratio of coaching staff-to-participants slightly favor the women's program. Concerning assignment of coaches, OCR found that overall, the women's and men's programs have comparable qualifications, education, and experience for their respective coaches.

OCR determined that compensation for coaches favors the men's program when compared to the women's program in total compensation allocated for the 2013-2014 school year. Further analysis reveals that the proportion of the percentages of compensation are not equivalent to the proportion of male to female participants in the athletics program. The differences in compensation between the programs are attributed to Football, which has a significantly larger team, requiring a greater coaching staff, and in turn, additional salaries and compensation. In addition, differences in comparable sports' compensations also revealed nondiscriminatory factors that would impact compensation differences favoring either men's or women's sports, including work experience and number of athletes. As such, OCR determined that while there are differences in compensation between the men's and women's programs, which typically are in favor of the men's program, these differences can be attributed to identified nondiscriminatory factors.

In summary, OCR determined the availability, assignment and compensation of coaches for the women's athletic program was equivalent to that provided to the men's athletic program.

Although there are differences with regard to the factors examined, most notably differences in compensation, the evidence did not reveal that these differences were sufficient to constitute a significant disparity, as the differences did not have a negative impact on athletes of one sex when compared to the other sex overall.

In analyzing all the factors of the coaching component, the primary focus of the analysis is the availability of coaches. Based on the analysis of the evidence, OCR determined that the availability and qualifications/ assignment of coaching staff for the men's and women's program is equivalent in effect, with negligible differences that do not result in a disparity. Regarding the compensation of coaches, OCR determined differences in salaries resulting in a disparity favoring the men's program; however, OCR also identified some nondiscriminatory factors to justify this disparity. Based on the analysis of the compensation factor, OCR is unable to conclude that the evidence supports that the disparity in compensation favoring the men's program has negatively impacted the women's program, given that OCR was able to establish that availability and assignment of coaching are equivalent.

Therefore, OCR's investigation found that overall, equivalent benefits, treatment and services are being provided to University male and female athletes for this component.

6. Provision of locker rooms, practice and competitive facilities -- 34 C.F.R. § 106.41(c)(7)

OCR assesses 6 factors in determining compliance with this component: the quality and availability of locker rooms and the quality, availability, exclusivity, maintenance and preparation of practice and competitive facilities. OCR reviews the quality and availability of the University's athletic facilities provided for practice and competitive events; the exclusivity of use of facilities provided for practice and competitive events; the availability of locker rooms; the quality of locker rooms; the maintenance of practice and competitive facilities; and the preparation of facilities for practice and competitive events.

As part of the investigation, OCR examined the policies and procedures used by the University to allocate locker rooms, practice and competitive facilities to determine if they differ based on sex, and found no differences.

Quality of practice and competitive facilities

Regarding the quality and availability of the practice and competitive facilities for the men's and women's teams, OCR surveyed and interviewed coaches and players and also conducted a visual inspection of all practice and competitive facilities used by the men's and women's teams, including offsite facilities. With respect to the availability of the practice and competitive facilities, coaches and players for men's and women's teams stated that the facilities were available for use while their teams were in season. While Women's Basketball coaches noted in surveys that they have had practices canceled due to other events taking place, the University clarified this occurred only one day when the University hosted the NCAA 1st/2nd rounds of the Women's Volleyball championship in December 2014 and Women's Basketball either had to adjust their practice time or relocate to a different court in the building to practice.

With respect to the quality of the practice and competitive facilities, for the men's teams, all had facilities rated as Excellent or Good by the coaches and players while the Men's Baseball team had facilities rated as the worst in the SEC league by coaches. For the women's teams, all had

facilities rated as Excellent or Good. OCR's inspection of the quality of the practice and competitive facilities revealed all facilities in Excellent condition with the exception of baseball, which OCR considered to be Good when compared to all other facilities on campus. The University has plans to address this concern by building a new baseball complex over the next few years and renovate or build a new tennis complex by 2018.

Exclusivity of use of facilities provided for practice and competitive events

The next factor considered by OCR was whether the male and female teams had exclusive use of their practice and competitive facilities during their scheduled seasons. Men's and Women's Soccer share the Bell Soccer Complex for practice and games, Men's and Women's Swimming share the Lancaster Aquatic Center for practice and meets, Men's and Women's Tennis share the Hilary J. Boone Varsity Tennis Complex for practice and matches, and Men's and Women's Track share the Outdoor Track and Field Complex for practice and meets. Baseball, Football and Softball each have their own practice/competitive facility. Women's Basketball, Gymnastics and Volleyball share the Memorial Coliseum as a competitive facility. Women's Basketball also competes at the Rupp Arena several times a year. Women's Volleyball practices at the Memorial Coliseum. Men's and Women's Basketball each have their own practice court at the Joe Craft Center. Men's Basketball uses the Rupp Arena as a competitive facility. The Rupp Arena is not University owned. It is a city owned facility that is used for concerts and other events, but during basketball season, the Men's Basketball team has priority use of the facility. All coaches indicated that they have priority use of their facilities while their sport is in season. Gymnastics stated they may have difficulty scheduling practice at the Coliseum the day prior to a competition and reported that the team had to cancel a practice at the Coliseum due to another event occurring. However, Gymnastics has their own practice facility at the Nutter Fieldhouse exclusive to their use. Thus, OCR found no disparity regarding the assessment factor of exclusivity of use of practice and competitive facilities.

Availability of locker rooms

Next, OCR compared whether the men's and women's teams had exclusive use of their locker rooms. All of the men's and women's teams have exclusive use of their locker rooms while the team is in season with one minor exception. The Men's and Women's Swimming teams share locker rooms with the public, although when the teams are practicing and during meets, the locker rooms are closed to the public and club swimming. All of the remaining teams indicated that they had exclusive use of their locker room and lockers are assigned to athletes for their sport career. Therefore, no disparity exists regarding the factor of exclusivity of use of locker rooms.

Quality of locker rooms

Next, OCR compared the quality of the locker rooms provided to the men's and women's athletes. Three teams have two locker rooms (Men's Basketball, Football, and Gymnastics) since their practice facilities are different from their competitive facilities. For all teams, information from the coaches, players, and OCR's onsite shows the quality of the locker rooms for those is Excellent, with the exception of the Gymnastics practice locker room which coaches and OCR determined to be average.

All teams have lounges in addition to their locker rooms. Men's and Women's Track, Men's and Women's Tennis, Men's and Women's Swimming, and Men's and Women's Golf each share a lounge. The Football team lounge, although in good condition, was not of a sufficient size to effectively accommodate all players. This will be remedied as the University is building a new

football training facility. Baseball, Men's and Women's Basketball, Men's and Women's Soccer, Softball, and Volleyball each have their own team lounge, each of which OCR considered to be in excellent condition. Men's Basketball has an additional lounge area at the Rupp Arena which is attached to the locker room at that facility which is also in excellent condition.

Maintenance and preparation of practice and competitive facilities

Finally, OCR compared the maintenance and preparation of the practice and competitive facilities for the male and female teams. Most of the facilities are prepared and maintained by University staff. Athletes of some teams (Baseball, Gymnastics, Softball, and Men's and Women's Swimming) assist in the preparation of practice, i.e., set out some equipment or clean up. The preparation of facilities was rated by all coaches and players as either Good or Excellent. The three teams who play offsite (Men's Basketball and Men's and Women's Golf) have facilities that are maintained by the staff of the facilities where the teams play.

Conclusion

Based on the above information, OCR's investigation found that overall, equivalent benefits, treatment and services are being provided to University male and female athletes for this component.

7. Provision of Medical and Training Facilities and Services - 34 C.F.R. § 106.41(c)(8)

In determining compliance in the provision of medical and training facilities and services, OCR considers the following five factors: availability of medical personnel and assistance; health, accident and injury insurance coverage for athletic participants; weight and conditioning facilities; availability and qualifications of athletic trainers; and quality and availability of training facilities.

Availability of Medical Personnel and Assistance

According to University and NCAA policy, the University requires all athletes to complete a pre-participation physical examination prior to the athlete being issued equipment, being permitted to attend any practice or strength and conditioning session, and/or competing in any intercollegiate athletic activities. Surveys and interviews with coaches and athletes confirmed that athletes, male and female, are usually scheduled for these physical examinations during the month of August of each school year at the University Student Health Unit.

OCR also found that physicians from the University were made available to the athletes upon sports-related injuries. This was done both on a scheduled basis, walk in (first come first served) basis or emergency-related treatment, if necessary. This was for all athletic teams, male and female, and also was applicable to home and away events.

Regarding the quality of medical personnel, OCR reviewed the qualifications of all physicians available to all student athletes and found them comparable.

According to coaches, the following teams reported that they always have a physician available to them at home games: Men's and Women's Basketball, Men's and Women's Cross Country, Football, Men's and Women's Soccer, Men's and Women's Swimming, Men's and Women's

Track, Gymnastics, and Volleyball. However, the Director of Sports Medicine stated a physician is not present for Men's and Women's Cross Country, Men's and Women's Track, and Men's and Women's Swimming home events.

The Director of Sports Medicine stated a physician only travels with Men's Basketball and Football for away events and with Women's Basketball during tournaments. He also stated that all teams have the competing team's doctor available to them during away events.

OCR noted differences regarding the availability of medical personnel. Because of the uniqueness of Football, and high probability of injury regarding this contact sport, OCR has determined that this is a permissible difference. Further, because the physician for the home team treats Women's Basketball at away games, and the University provides the same for visiting women's basketball teams, OCR has determined that the difference between Women's and Men's Basketball is permissible. Women's Basketball could also have a traveling physician, however, the head Women's Basketball coach is comfortable with the coverage by the athletic trainer and competing team's physician and does not feel it is necessary, though the option remains available. No athlete or coach expressed concern about access to medical personnel.

Health, Accident and Injury Insurance Coverage

The University provides blanket accident insurance program for its athletes. This was confirmed by coaches and athletes surveys and during interviews. The insurance coverage covers injuries/illnesses/accidents resulting from the direct participation in the intercollegiate athletic program during participation at games and practice sessions and conditioning sessions, as approved by the Athletic Director and in accordance with NCAA regulations.

The University is self-insured up to \$20,000 per athletic incident. The University utilizes the athlete's personal insurance first and the University covers any expense not covered by personal insurance. For incidents between \$20,000 and \$100,000 the University uses a gap insurance plan purchased. Any incident that exceeds the \$100,000 amount would then go against the Catastrophic Insurance plan through the NCAA. There are no differences regarding the type of sports played, nor any based on the sex of the athletes.

Availability and Quality of Weight and Conditioning Facilities

Athletes, both male and female, have access to three weight conditioning facilities. Football and Baseball generally use the Nutter Center on a regular basis. Men's and Women's Basketball, Rifle and Volleyball use the Joe Craft Center which houses a weight room and training room. Gymnastics, Men's and Women's Golf, Softball, Men's and Women's Soccer, Men's and Women's Swimming, Men's and Women's Tennis and Men's and Women's Track and Field, and occasionally Baseball, use the Shively Sports Center which has a weight room and turf workout room.

All three weight and conditioning facilities are of comparable quality. Based on interviews with the athletes, and physical observation during OCR's onsite visit, the quality of the facilities are good. According to the surveys, both men and women are satisfied with the quality and availability of the weight and conditioning facilities.

OCR's review of information indicated that times were convenient for all teams, male and female, and were largely accommodating to the team's practice and competitive times, and based on whether the team was in season.

Availability and Qualifications of Athletic Trainers

At the University, full-time trainers are assigned different sports; however, any athlete can access medical assistance from a trainer on both on a scheduled and an as-needed basis at one of the medical training centers if their assigned team trainer is not available. Three trainers are assigned to Football, one of which is also assigned to Swimming/Diving and one of which is also assigned to Men's and Women's Tennis. A trainer is assigned to Baseball and Softball. One trainer is assigned to Men's Basketball and Men's Golf. One trainer is assigned to Women's Basketball and Rifle. One trainer is assigned to Men's and Women's Soccer. One trainer is assigned to Women's Golf, Gymnastics and Women's Volleyball. One trainer is assigned to Men's and Women's Track and Field and Cross Country. All trainers and graduate assistants are ATC-certified trainers, and LATC- licensed trainers.

Additionally, graduate assistant trainers are also assigned to the following sports: one for Baseball, one for Football, one for Football and Rifle, one for Men's Golf and Women's Gymnastics, one for Softball, one for Men's and Women's Swimming and Diving, Men's and Women's Tennis, one for Men's and Women's Track and Field/Cross Country.

Many undergraduate students also provide athletic training support to the teams. Most notably, nine for Football, two for Men's Soccer, two for Women's Basketball, two for Men's and Women's Track and Field/Cross Country, and one for each remaining sport are available.

Based on the University's report and staff interviews, full time trainers travel to away games with all teams except Rifle. Graduate assistant trainers travel to away games with the following men's teams: Tennis, Track, Cross Country, Swimming, Baseball, Golf and Football. Graduate assistant trainers travel with the following women's teams: Soccer, Tennis, Track, Cross Country, Swimming, Softball, and Gymnastics. Coach and athlete surveys and interviews largely confirmed the above information. It was confirmed that the trainers were available to all of the programs for both practice and competitive events, except for practice sessions for the Men's and Women's Golf teams because they currently hold practices several miles from campus. It was noted that a student trainer is sometimes available for practice.

Availability and Quality of Medical Training Facilities

At the University, athletes, both male and female, have access to three main medical training facilities and administrators informed OCR that any athlete may receive treatment at any facility. All facilities are comparable and in excellent condition. Also noted are smaller training facilities located at all facilities in which teams can receive medical training services at their practice/competitive sites. Additionally, in the Men's Basketball locker room at the Rupp Arena there are treatment tables and hot/cold therapy tubs.

Conclusion

In addressing the five factors detailed above, OCR noted minor differences. However, any such differences did not necessarily favor one sex or the other, and/or were attributable to nondiscriminatory reasons (e.g., the unique nature of contact sports, frequency of injuries, and number of participants). Therefore, OCR determined that the provision of medical and training facilities and services was equivalent or equivalent in effect regarding this component.

8. Provision of Housing and Dining Facilities and Services - 34 C.F.R. § 106.41(c)(9)

In assessing compliance in this area, OCR considered the equivalence for men and women of the housing and dining facilities and services or other related special services provided for student athletes. OCR examined the University's information and publications pertaining to Housing and Dining for the 2012-2013 and 2013-2014 academic year. In addition, OCR conducted interviews with University coaches and student athletes with regard to housing and dining facilities and services.

Housing

OCR's review of information and surveys and interviews with coaches and male and female athletes revealed that the University provides no special housing for athletes, although Men's Basketball historically lives at the all-male Wildcat Coal Lodge, where non-athletes also live.

Male and female athletes are given the option to reside on-campus or to live off-campus. During the 2015-2016 school year, coaches and students reported that generally only freshman live on campus and those athletes are housed in four University dormitory facilities. Upperclassmen generally live off campus. The University reported that dormitories are selected according to coaches' preference.

The Athletic Director reported that generally, the coaches pick a dormitory close to the team's practice facility. The University stated that due to NCAA requirements a certain number of non-athletes must reside in a residence where athletes live, a practice applied to men's and women's teams. Therefore, there is no housing designated exclusively for athletes or special housing for athletes. All teams reported that housing was arranged by athletic department for athletes who wish to reside on campus.

Based on OCR's inspection, a difference exists in that all Men's Basketball and several Men's Track and Men's Soccer team members were assigned to rooms with two people to a bedroom whereas all other teams had access to dormitories with a private bedroom. However, OCR notes that the Men's Track and Soccer athletes chose this dormitory due to the cost as they were not receiving an athletic scholarship.

Housing facilities are open pre-season or during school breaks for athletes required to be on-campus prior to the beginning of classes or during periods when students are generally not on campus, with the exception of Championship Court 1 which is closed during breaks and could affect three women's teams (Women's Basketball, Women's Soccer and Volleyball). Athletes who live in Championship Court 1 stay in a hotel close to campus during such breaks. This affects approximately 22 female athletes. No complaints were noted by coaches or athletes.

Male and female athletes receive equivalent special services as part of housing arrangements, the same as those provided the general student body such as access to laundry facilities and kitchen facilities. Although staying in a hotel over breaks only affects women's teams and no men's teams, this is nonetheless a special housing arrangement permitting these students to stay at the University during breaks and OCR determined this did not have a negative effect on female athletes.

Dining

The University contracts dining services with the Aramark Corporation (Aramark). There are special dining facilities or services for athletes. OCR's investigation revealed that all male and female athletes on scholarship are provided funds to enable them to purchase a meal plan equal to the meal plans available to the general student body. Meal plans are suggested by coaching staff but a meal plan is included for anyone on an athletic scholarship. The same meal plans are available to all students but an athlete can choose to substitute some of those meals with training table meals based on NCAA rules. This is available to all sports, men and women.

According to surveys, athletes get per diem if meals are needed during school breaks. The University reported that the per diem rate during school breaks is \$7, \$10, \$13, which is dictated by the on campus meal rates. These rates are the same for all sports. Per diem rates while on travel are different.

Regarding the 2013-2014 academic year, all teams were provided with pre-game meals except gymnastics. When home, gymnastics chooses to not have a pre-game meal; however, at away events they will have a pre-game meal as a team about 3.5 hours before an event due to a long warm-up session. The Athletic Director reported that all teams either have a pre and post-game meal which can be substituted for one of the meals already included in the athlete's meal plan (e.g., the pre-game meal will replace breakfast, lunch, or dinner for that day, depending on the time it is served). Coaches and athletes confirmed that they have either a pre-game or post-game meal of some sort, generally provided in their team lounge, according to coach and athlete preference.

The University reported that all teams use training table meals in accordance with NCAA rules and its student athlete handbook policy. If an athlete has a class, tutoring, practice, or travel that conflicts with the training table dining services, staff are permitted to provide a to-go box in lieu of (not in addition to) eating at the dining facility. Athletes reported to OCR that training table meals are available Monday through Thursday, whereas Men's Basketball are provided training table meals Monday through Friday. The University reported the number of training table meals a team receives is dictated by the coach's preference. Coaches of teams who receive only four days of training table meals elect to return the additional money to the student athletes' meal plan primarily because they may be traveling on a Friday. According to the University's sport nutritionist, all training table meals are of the same quality regardless of location and sport. No complaints were noted by coaches or athletes regarding the quality of food provided.

The University also reported to OCR during its on-site inspection that with the recent NCAA deregulation of meals legislation, there is more freedom in feeding student-athletes. As such, each team's team room/lounge was filled with healthy snacks and sandwiches for athletes to eat at any time.

Conclusion

OCR determined that, while there are no separate housing facilities solely for student-athletes, the University does reserve space in specific facilities for student-athletes. The University also provides a special housing service to student athletes by permitting them to stay at the University at times when other students are not on campus. This is a benefit that applies to all student-athletes residing in University housing. While some male student-athletes stayed in housing where a room was shared with another student, this generally applied to student-athletes who

were seeking lower-cost housing. OCR determined that the University does provide special dining services to all student athletes in the form of training table meals and pre or post-game meals as well as health snacks in each teams' lounge. Based on the information, only gymnastics did not have a pre-game meal in the same manner as other teams did, which was due to the nature of the sport.

Overall, OCR determined that the University is providing female and male athletes with equivalent housing and dining benefits for this component.

9. Publicity - 34 C.F.R. § 106.41(c)(10)

In assessing compliance regarding the provision of publicity, OCR considers the availability and quality of sports information personnel, the services they provide, other publicity resources, and the quality and quantity of publications and other promotional devices featuring men's and women's programs.

Availability and Quality of Sports Information Personnel

Publicity is coordinated by the Media Relations Office of Sports and its members act as the liaison between the athletic teams, staff and the media. The Media Relations Office write media guides, game programs, game notes and news releases, handle social media, respond to requests for information and materials from the media and public, coordinate interviews, host media for home events, and work with other offices such as multi-media, marketing, event management, and sports video.

Regarding the availability and quality of media relations personnel, each team has at least one staff member assigned to it. Several teams have more than one media relations staff assigned (Baseball, Football, Men's and Women's Basketball, and Volleyball). Some sports share a media relations staff member (Men's and Women's Golf, and Men's and Women's Cross Country and Track and Field). According to information on the University's website, media relations personnel assigned to men's and women's teams have similar backgrounds and levels of experience. Media relations personnel are present during all teams' home events with the exception of Rifle. Media relations personnel are present at away events for many teams with the exception of Men's and Women's Golf and Rifle. Media relations personnel are present occasionally at Men's and Women's Cross Country and Men's and Women's Swimming events and only during Women's Tennis post-season.

Media relations personnel draft press releases for all of the men's and women's sports. These press releases, which usually include scores and highlights, are issued after each game/event (i.e., recaps) and are also disseminated at the beginning of each season for each sport, when announcements are made regarding which players are participating along with a schedule of games/events. OCR found that press releases are done for all the men's and women's teams and are of comparable quality. The press releases are also posted on the school's website and disseminated to media outlets in the area. The University media relations personnel also prepare pre-game advances and features of particular athletes, assist in making coaches and players available for any other media outlets, and also prepare statistics for posting on the website and for dissemination to media outlets.

Quality and Quantity of Publications and other Promotional Devices

Regarding each team's website, OCR's review (at various times), indicated that both men's and women's sports programs received comparable coverage and anyone can view updates, news and features for any particular sport.

Other publicity resources for the University athletics programs include television, radio, and internet. Specifically, Baseball, Men's and Women's Basketball, Football and Volleyball receive radio coverage. Television coverage is provided by CBS, SEC Network and ESPN. Baseball, Men's and Women's Basketball, Football, Women's Gymnastics, Men's and Women's Soccer, Softball, Men's and Women's Track, and Women's Volleyball events receive complete television coverage and/or live video streaming. CBS televises a select number of Men's Basketball and Football games, while ESPN owns the remainder and selects some for broadcast on one of its channels. Many men's and women's events can be viewed via live video on the SEC or ESPN networks.

While differences in coverage may exist (television vs. live video) between the men's and women's teams, those differences were attributable to marketability and contractual arrangements with television stations.

Promotions are done during men's and women's sporting events. Media personnel noted during an interview that women's teams are promoted more than men's teams. For outdoor sports such as Football and Men's and Women's Soccer, promotions include inflatable games available for children and tailgate parties for adults. Women's soccer has a blue shirt game day for reduced admission. For indoor events, free pizza may be provided. During pregame, halftime or timeouts, activities will be scheduled such as face painting and shootout competitions during Men's and Women's Basketball games. Women's Basketball sponsors local elementary school students to attend games. Football has military and fan days where fans can get autographs. Women's Tennis has temporary tattoos for fans and free pizza day. The marching band plays at all home football games and one away football game. The pep band comes to home Men's and Women's Basketball and Women's Volleyball games. Cheerleaders and mascots are present during all home and away Football games, Men's and Women's Basketball and Women's Volleyball games. The dance team is present at all home Football games and Men's and Women's Basketball games.

OCR reviewed information provided by the University and found that publicity was also provided by the sports information personnel for men's and women's teams in a variety of other manners, including press/media guides, pocket and keychain game schedules, game programs, and posters. For men's and women's programs, they were of comparable quality and quantity. For example, media guides for all sports contained similar information, such as pictures of the players, individual and team statistics, feature articles, and corresponding schedules. They largely had exteriors with color covers/pictures, and black and white material inside. Certain sports with fewer participants, like Men's and Women's Golf were provided smaller media guides and no game programs.

The University's sports information office also provides news and updates regarding the sports programs via social websites, such as Facebook and Twitter. OCR found that five men's teams and five women's teams had Facebook pages, six men's teams and six women's teams have Twitter accounts, and three men's teams and five women's teams have Instagram accounts. At

various times, OCR's review of these sites indicated that there were no preferences regarding men's and women's programs.

A few survey or interview responses from student athletes and coaches on some men's and women's teams stated that they were disappointed regarding the amount of publicity provided their respective teams. However, no athlete or coach attributed any lack of publicity to the sex of the athletes. OCR also noted television monitors located throughout the campus which advertised men's and women's game schedules. Additionally, promotional pictures of athletes and signage from all sports were placed in various locations such as near coaches' offices and team rooms.

Conclusion

Regarding publicity, OCR determined that there were no differences regarding the quality of publications or other promotional devices. OCR found minor differences regarding the availability of the media relations personnel and the services provided by them, as well as television coverage versus live video; but they were negligible and attributable to legitimate nondiscriminatory reasons. As such, the benefits provided were equivalent or equivalent in effect for this component.

10. Provision of Support Services - 34 C.F.R. § 106.41(c)

In assessing compliance in this area, OCR considered, among other factors, the equivalence for men and women teams regarding the amount of administrative, secretarial, and clerical assistance received, and the availability of office space, equipment and supplies, and other support services. The University does not have a formal written policy regarding administrative services and distribution of staff support to athletic teams. However, if a coach wants additional support, the coach and the Athletic Director work to develop a plan so that the additional support is provided. For example, the Softball team needed an Operations Director and the job responsibilities of its support personnel were revised from a clerical support position to an operations position. It was reported that in some instances, a coach or administrator may request a part-time graduate assistant rather than a full time employee because the coach or administrator wishes to give a former player an opportunity.

Amount of Administrative, Secretarial, and Clerical Assistance

OCR reviewed official job descriptions for each administrative and clerical support position within the athletic department pertaining to support services for the 2012-2013 and 2013-2014 academic years. In addition, OCR surveyed University coaches and student athletes to determine the extent of administrative support, equipment and supplies, and office space available to the men's and women's teams.

The athletic program is headed by the Athletic Director, who reports to the President of the University. The University employs more than 200 full-time staff who serves the Athletic Department.

The University has Executive Associates, Associates and Assistants responsible for compliance, finance, operations, development, administration, ticket sales, sales management, facilities, academics and eligibility, media relations, marketing and licensing, student services, capital projects, and event management and championships.

Each team is provided with administrative and clerical support personnel:

- Men's and Women's Basketball and Football have more than one person assigned to their team;
- Baseball, Softball, and Volleyball each have one person assigned to their team;
- Men's and Women's Golf, Gymnastics, Rifle, and Men's and Women's Track share one staff person;
- Men's and Women's Soccer and Men's and Women's Tennis share one staff person; and
- Men's and Women's Swimming share one staff person.

The University indicated that Men's Basketball and Football have a greater need for administrative support due to higher number personnel needed for travel and coordination required by these programs as well as a large number of requests from the public for appearances, autographs and community services.

OCR's surveys and interviews with coaches revealed all performed some level of their own clerical work necessary in support of their teams' activities. However, Baseball, Men's and Women's Golf and Men's and Women's Soccer were not wholly satisfied with the level of support services stating that coaches spent time on many support tasks. While one of the assistant coaches (Men's Golf) surveyed reported a concern that any difference in assigned administrative support impeded their coaching duties and responsibilities or recruiting activities, this was contradicted by the Men's Golf head coach.

Availability of Office Space, Equipment and Supplies

Coaches for all teams are provided with an office phone and a monthly stipend for a cell phone.

All coaches are provided a computer (laptop, desktop or both) and have access to office equipment such as printers, copiers, scanners, fax machines, TV, cameras and video editing equipment. Any differences with regard to the shared availability of office equipment did not represent a significant disparity, as all coaches indicated that they have access to necessary equipment. The following teams were provided with video services from support personnel at home events: Baseball, Men's and Women's Basketball, Football, Gymnastics, Men's and Women's Soccer, Softball, Men's and Women's Tennis and Volleyball. The following teams were provided with video services from support personnel at away events: Baseball, Men's and Women's Basketball, Football, and Softball. Women's Soccer said they received video services at away events at varying times.

OCR inspected and analyzed office space provided for coaches of men's and women's teams. OCR determined all coaches of men's teams and women's team have their own office. Although some minor differences in the size of office space provided for men's, women's and combined teams exist, all had access to similar quality of furniture and office supplies, and there is no significant disparity in the office space provided for men's and women's teams. OCR observed while on-site that the head coaches' offices of Men's and Women's Basketball and Football were slightly larger than all other coaches offices and included a small bathroom in the office.

Conclusion

OCR determined that a difference in clerical support exists; specifically, the two teams that have more than one assigned full-time administrative support are men's teams (Basketball and

Football). As to whether this difference constituted a significant disparity, OCR considered that Men's Basketball and Football has a greater need for administrative support due to higher number personnel needed for travel and coordination required by these programs as well as a large number of requests from the public for appearances, autographs and community services. OCR also considered that coaches of all men's and women's teams perform at least some clerical duties in support of their athletic team and that there are no meaningful differences in office equipment provided or office space. As such, the benefits provided were equivalent or equivalent in effect for this component.

11. Recruitment of Student Athletes - 34 C.F.R. § 106.41(c)

In assessing compliance in this area, OCR considered the following: 1) whether coaches or other professional athletic personnel in the University's programs serving male and female athletes are provided with substantially equal opportunities to recruit; 2) whether the financial and other resources made available for recruitment in the University's men's and women's teams are equivalently adequate to meet the need of each program; and 3) whether the differences in benefits, opportunities, and treatment afforded to prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of athletes of either sex.

Opportunities to Recruit

According to information submitted via the data response and surveys with University personnel, OCR determined that coaches (both head and assistant coaches) for each men's and women's team are involved with recruiting of athletes.

Coaches of men's sports do not receive significantly more recruiting trips than those of female sports, even considering football (due to the number of athletes on the football team). During the 2012-2013 and 2013-2014 academic years, men's teams took 53% of recruiting trips and women's teams took 47% of recruiting trips. The percentage of recruiting trips for women's teams were substantially higher than their participation rate for both years. The University reported that students are recruited nationally with a greater concentration in the Kentucky, Tennessee, and Ohio regional areas. In addition, three men's teams (Soccer, Tennis, and Track and Field) and four women's teams (Golf, Soccer, Tennis, and Track and Field) recruited internationally.

The coaches also reported to OCR that in addition to travel, they use the same or similar recruiting methods, i.e., telephone, facsimile, e-mail, text, U.S. mail.

All of the coaches for both men's and women's sports indicated that recruiting is an integral part of their jobs and they reported anywhere from 15% to 80% of their time is spent on recruiting. OCR found that while there may have been slight differences in the time spent by coaches on recruiting, there was no significant disparity such that would cause a negative impact on either the men's or women's teams. Additionally, none of the coaches surveyed asserted that they had a problem with the amount of time they were able to spend on recruiting duties. Of particular note, Baseball reported that the condition of its competitive facility compared to its SEC competitors, has a negative effect on its ability to recruit athletes. As noted previously, the University has plans to build a new baseball facility projected for 2018.

Financial and Other Resources

During the 2012-2013 school year, a total of \$1,767,111 was spent on recruiting. Of that total amount \$584,119 or 33% was spent on recruiting for Women's sports. Of that total amount, \$1,182,992 or 67% was spent recruiting for Men's sports. For the 2013-14 year, the data revealed that \$1,995,918 was spent on recruiting. Of that total amount, 64% went to male athletes \$1,277,761 and 36% went to female athletes \$718,157.

During the 2012-2013 school year, there was a 37% participation rate of female athletes and a 63% participation rate for male athletes. Thus, women's teams spent 4% less than their participation rate would indicate necessary for exact proportionality. During the 2013-2014 school year, there was a 36% participation rate of female athletes and a 64% rate for male athletes, and recruiting expenditures were exactly proportionate to their respective participation rates. Coaches of both men's and women's indicated that they are satisfied with money for recruiting.

Benefits, Opportunities, and Treatment of Prospective Athletes

According to the University's policies regarding recruitment of student athletes, all recruiting must be done in accordance with the NCAA, SEC, and University recruiting policies, which includes permissible entertainment for recruits. Any coach, administrator, student-host or prospective student-athlete who knowingly violates the regulations of the NCAA, SEC or University will be sanctioned. Violations are compiled in an annual report to the SEC. The Athletic Director corroborated during an interview that recruiting is done in accordance with the NCAA rules and that the University provides training to coaches who recruit.

The University submitted a list of prospective student athletes, by sex, who had trips to campus subsidized by the University. The list showed that during the 2012-2013 school year, there were a total of 211 prospective athlete visits; 131 male official visits (62%) and 80 female official visits (38%). During the 2012-2013 school year, there was a 37 % participation rate of female athletes and a 63 % rate for male athletes. For the male visits, a total amount of \$106,651 (65%) was spent and for the female visits, a total of \$56,827 (35%) was spent.

The numbers provided in surveys with the University athletic coaching staff were similar or the same to the above-referenced number of subsidized recruiting visits reported by the University. All coaches also indicated that the visits were the same or similar in quality with all students receiving the same entertainment; no one reported any exceptional services or treatments for any of the prospective student athletes.

Conclusion

While there are some noted differences based on the number of participants per sport, recruiting areas, OCR determined that coaches serving both male and female sports are provided with substantially equal opportunities to recruit, financial and other resources available for recruitment in both men's and women's athletic programs are equivalent or equivalent in effect for this component.

Overall Conclusion

In order to address the compliance issues identified above, the University entered into a Resolution Agreement with OCR (attached). When fully implemented, the Resolution

Agreement will address these issues. OCR will monitor the University's implementation of the Resolution Agreement to ensure the University's compliance with Title IX. The University has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement.

This letter sets forth OCR's determination in an individual 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.

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 which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR appreciates the courtesy and cooperation shown by your staff during the investigation and resolution of this case. We thank you and all University administrators and staff who worked with OCR throughout the course of this review. If you have any questions or concerns, please contact Program Manager Joseph Mahoney at (215) 656-8564 or joseph.mahoney@ed.gov.

Very truly yours,

/s/

Wendella P. Fox
Director
Philadelphia Office

Enclosure

Cc: William Thro, Esquire