



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DELAWARE
KENTUCKY
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PENNSYLVANIA
WEST VIRGINIA

January 10, 2022

In response, please refer to: OCR Complaint No. 03202033

Via e-mail only to: Presidentsoffice@towson.edu

Kim Schatzel, Ph.D.
President
Towson University
8000 York Road
Administration Building, Room 331
Towson, Maryland 21252

Dear President Schatzel:

This is to notify you of the resolution of the above-referenced complaint filed with the Office for Civil Rights (OCR) of the U.S. Department of Education, referred to as the Department, against Towson University, referred to as the University. XXXXXXXXXXXXXXXX, referred to as the Complainant, alleges that the University discriminated against his client, XXXXXXXXXX who was the XXXXXXXXXXXXXXXXXXXXXXXX at the University, referred to as the Coach. The Complainant alleges that the University discriminated on the basis of sex and engaged in retaliation against the Coach.

Specifically, the Complainant alleges that the University discriminated on the basis of sex by:

1. Failing to provide equal opportunities to female athletes in its intercollegiate athletic program in the following areas:
 - a) Assignment and Compensation of Coaches;
 - b) Provision of Locker Rooms, Practice and Competitive Facilities;
 - c) Provision of Medical and Training Facilities and Services;
 - d) Publicity;
 - e) Provision of Support Services; and,
 - f) Athletic Financial Assistance.
2. Treating the Coach differently than a similarly situated male coach when it suspended her employment and notified her, XXXXXXXXXX, that it would not be renewing her employment contract XXXXXXXXXXXXXXXX after a discrimination complaint was filed against her.

The Complainant also alleges that the University:

3. Retaliated against the Coach after she made complaints about Title IX inequities in men's and women's sports at the University XXXXXXXXXXXX and made complaints about gender bias XXXXXXXXXXXX by suspending her employment and notifying her, XXXXXXXXXXXX, that it would not be renewing her employment contract XXXXXXXX XXXXX.

OCR enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX and its implementing regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In reaching a determination, OCR reviewed documents and information provided by the Complainant, the Coach, and the University.

The University requested to voluntarily resolve Allegations 1.a through 1.e. and on January 7, 2022, entered into a Voluntary Resolution Agreement with OCR to resolve these allegations. OCR has determined that there is insufficient evidence to support a finding of discrimination with regard to Allegation 1.f. OCR is dismissing Allegations 2 and 3. An explanation of our findings is below.

Background Information

The Coach was employed XXXXXXXXXXXX at the University XXXXXXXXXXXXXXXXXXXX. The Coach had an employment contract with the University which was renewable solely at the option of the University for one-year terms. The contract would renew automatically unless the University in its sole discretion provided written notice of non-renewal to the coach. XX
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University staff met with the Coach and notified her that, XXXXXXXXXXXX her coaching contract would not be renewed for the following year. On XXXXXXXX, the Coach's employment contract with the University ended and she is no longer employed by the University.

Allegations 1.a through 1.e

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.41(a), provides 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 University.

The regulation implementing Title IX at 34 C.F.R. § 106.41(c), states that a recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, OCR considers factors such as: the assignment and compensation of coaches; the provision of locker rooms, practice and competitive facilities; the provision of medical and training facilities and services; the provision of publicity; and, the provision of support services. The Title IX Athletics Policy Interpretation, issued December 11, 1979, states that the Department will assess compliance by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent; that is, equal or equal in effect. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effects of any differences is negligible. If comparisons of program components reveal that treatment, benefits, or opportunities are not equivalent in kind, quality or availability, then a finding of compliance may still be justified if the differences are the result of nondiscriminatory factors.

Findings of Fact and Legal Analysis

The University's athletic teams compete in Division 1 of the National Collegiate Athletic Association, known as the NCAA. OCR's investigation established that the University offers the following sports: men's football, men's and women's basketball, men's and women's lacrosse, women's tennis, men's and women's golf, women's gymnastics, women's field hockey, women's soccer, women's softball, men's and women's swimming and diving, women's track and cross-country and women's volleyball. The University provided the following information about the athletic components in Allegations 1.a through 1.e.:

- **Assignment and compensation of coaches:** The University provided compensation information for each coach for the 2019-20 school year and described the factors it considers when calculating a salary for a coach, including the sport coached, the size of the team, the successes of the coach, and the experience of the coach.
- **Locker Rooms, Practice and Competitive Facilities:** The University reported that all women's and men's teams have their own locker rooms that are available to the student-athletes throughout the entire year. Most of the teams' locker rooms are located close to their practice and/or competitive fields to provide easy access to the student-athletes. The following women's and men's teams use the same facilities: men's and women's basketball; men's and women's lacrosse; and men's and women's swimming and diving. The University stated that the following women's teams have all received new facilities since 2015: soccer, field hockey, softball, and tennis. The only men's team that does not share a facility with another sport is the men's baseball team, which last received a new facility in 2001.

- **Medical and Training Facilities and Services:** The University stated that all student-athletes have access to the same medical care, provided by University Sports Medicine which is composed of certified athletic trainers, physical therapists, chiropractors, team physicians, strength and conditioning coaches, dietitians, and other health care professionals. The University has sixteen athletic trainers all of whom are certified athletic trainers and are capable of working with all of the sports teams. The medical treatment for student-athletes is provided at three different sports medicine facilities. The teams are assigned to specific facilities based on the proximity of the team's practice and competitive facilities to the medical facilities.
- **Publicity:** The University maintains a website which highlights each team and posts the team's schedule, roster, and news. Also, the Sports Information Department produces season previews, student-athlete profiles, and game stories. All of the teams have pages on social media that are used to promote competitions, and all teams have their competitions filmed with highlights posted online. Publicity is also provided for teams through printed posters and schedules, and through the use of digital bulletin boards near campus.
- **Support Services:** According to the Complainant, women's teams receive less support staff and less experienced support staff compared to men's teams. OCR would need to conduct additional investigation, including interviews, to make a finding on this component.

Under OCR procedures, allegations may be resolved before the conclusion of an investigation if a recipient asks to resolve the allegations by signing a Voluntary Resolution Agreement. The provisions of the agreement must be aligned with the allegations and the information obtained during the investigation and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the University requested to resolve Allegations 1.a through 1.e through a Voluntary Resolution Agreement, referred to as the Agreement, which was executed by the University on January 7, 2022. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University's implementation of the Agreement.

Allegation 1.f.: Athletic financial assistance

Legal Standards

In assessing the University's compliance with Title IX, OCR examines whether the University provides its athletes scholarship opportunities in proportion to the number of students of each sex participating in intercollegiate athletics. 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 requires a recipient to provide reasonable opportunities for athletic scholarships or grants-in-aid awards for members of each sex in proportion to the number of students of each sex participating in intercollegiate athletics.

OCR measures compliance with this Title IX regulation by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program, and comparing the results to determine whether proportionately equal amounts of financial assistance are available to the men's and women's athletic programs. Institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. If any unexplained disparity in the scholarship budget for athletes of either sex is one percent or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Conversely, there will be a strong presumption that an unexplained disparity of more than one percent is in violation of Title IX. OCR then examines whether there are any legitimate, nondiscriminatory explanations for any differences that exist, such as differences related to reasonable professional decisions appropriate for program development and adjust the total amounts of aid to take those differences into account.

Findings of Fact and Legal Analysis

The Complainant alleges that, XXXXXXXXXXXXXXXXXXXX, female athletes received disproportionately less athletic financial assistance than male athletes. In addition, the Complainant alleges that female athletes were not given as many scholarships as male athletes in XXXXXX XXXXX.

According to the information provided by the University in its Equity in Athletics Disclosure Act (EADA) report, female athletes represented 52.79% of the total athletes at the University for the 2017-18 school year. During the same year, female athletes received 52.61% of the University's athletic scholarship funds, which is a difference of 0.2%. During the 2018-19 school year, female athletes represented 54.03% of the athletes and accounted for 53.06% of the athletic scholarships, representing a difference of slightly less than 1%. Finally, during the 2019-20 school year, the most recent year for which EADA data is available, female athletes represented 53.19% of the athletes and accounted for 53.37% of the athletic scholarships, representing a difference of 0.2%.

Based on OCR's review of the University's EADA reports, OCR concludes that the University is providing opportunities for financial assistance to members of both sexes that are substantially proportionate to the participation rate of men and women in the intercollegiate athletics program. For the 2017-18, 2018-19 and 2019-20 school years, the disparity between the number of female participants in its athletic program and the amount of financial aid available for females was .2%, just under 1%, and .2%, respectively. There is a strong presumption that those small disparities are reasonable and based on legitimate and nondiscriminatory factors. Therefore, OCR finds that there is insufficient evidence to support the Complainant's allegation that the University failed to provide equal athletic financial assistance, as alleged in Allegation 1.f.

Allegations 2 and 3

Under Section 108(j) of OCR's Case Processing Manual (CPM), OCR will dismiss an allegation when the same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with a state or federal court.

After opening the above allegations for investigation, OCR learned that XXXXXXXXXXXX, the Complainant filed the same or similar allegations based on the same operative facts in a complaint currently pending before the U.S. District Court XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX¹. The federal court complaint includes allegations of discrimination on the basis of sex and retaliation. Specifically, the federal court complaint alleges that the University treated the Coach differently than a similarly situated male coach when it placed her on administrative leave and terminated her employment at the end of her contract XXXXXXXXXXXX. The federal court complaint also alleges that these employment actions were in retaliation for the complaints that the Coach made to the University that she was not being treated the same as male coaches.

The allegations in the federal court complaint above are similar to and based on the same operative facts as OCR Allegations 2 and 3. Therefore, OCR is dismissing Allegations 2 and 3 effective the date of this letter pursuant to Section 108(j) of the CPM. The Complainant may refile with OCR within 60 days following the termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. A dismissal with prejudice is considered a decision on the merits.

The Complainant has a right to appeal OCR's determination regarding Allegations 1.f, 2 and 3 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

[illegible]

If you have any questions, please contact the attorneys assigned to the complaint: Catherine Nguyen (Catherine.Nguyen@ed.gov; 215-656-5954) or Sarah Haake (Sarah.Haake@ed.gov; 215-656-6416).

Sincerely,

/s/
Vicki Piel
Team Leader

Attachment

Cc: Ann D. Ware, Assistant Attorney General, Counsel for the University (via email only)