



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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July 6, 2017

Dr. David J. Livingston
President
Lewis University
One University Parkway
Romeoville, IL 60446

Re: Lewis University
OCR #05-14-2367

Dear President Livingston:

This is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), which alleged that Lewis University (University) discriminates against women on the basis of sex by not providing male and female students equal opportunities in the University's intercollegiate athletics program.

In its complaint investigation, OCR reviewed whether the University provides male and female students an equal opportunity to participate in the University's intercollegiate athletic program by effectively accommodating their interests and abilities and by providing opportunities for athletic financial assistance to members of both sexes in proportion to the participation rate of men and women in the intercollegiate athletics program. OCR also investigated whether the University provides equal athletic opportunities to male and female students in its provision of benefits and opportunities pertaining to: equipment and supplies; scheduling of games and practice time; travel and per diem allowances; opportunity to receive academic tutors and coaches; assignment and compensation of tutors and coaches; locker rooms, practice and competitive facilities; medical and training facilities and services; housing and dining facilities and services; publicity; support services; and, recruitment of student athletes.

OCR investigated this complaint 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, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdiction under Title IX to investigate these issues.

During the course of the investigation, OCR determined that the University has not effectively accommodated the interests and abilities of males and females in the provision of athletic opportunities and has not provided athletic financial assistance to members of both sexes in proportion to their respective participation rates in the intercollegiate athletics program. OCR

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

also noted deficiencies in the provision of equal opportunity as they pertain to the parts of the component areas addressing: the scheduling of games and practice time; the provision of travel and per diem allowances; the availability, assignment and compensation of coaches; and the provision of locker rooms, practice and competitive facilities. OCR found insufficient evidence of a violation of Title IX regarding the University's provision of: equipment and supplies; academic tutors; medical and training facilities and services; housing and dining facilities and services; publicity; support services; and, recruitment of student athletes.

On April 27, 2016, OCR entered into a resolution agreement (Agreement) with the University to resolve the noncompliance and deficiencies noted herein.

Background

The University is a fully accredited, private, postsecondary institution located on a 410-acre¹ main campus in Romeoville, IL, which is a suburb 35 miles southwest of Chicago. The University houses 1,300 students in twelve residence halls at the main campus. According to the University, it has a total enrollment of 6,500 undergraduate and graduate students; it has six colleges and it offers 80 undergraduate majors and programs of study, 35 graduate programs, and two doctoral programs.

According to information provided by the University, in 2015-16, its full-time undergraduate enrollment at the main campus was composed of 4,086 students, of which 1,835 (44.9%) are male and 2,251 (55.1%) are female. The University offered 10 sports for men and 10 sports for women and its teams competed at the National Collegiate Athletic Association's (NCAA) Division II level. All men's and women's sports competed in the Great Lakes Valley Conference (GLVC),² except for men's volleyball, which competed in the Midwest Intercollegiate Volleyball Association (MIVA).³

During the investigation, OCR obtained information from the Complainant and others, as well as documentary data from the University, and interview and survey information from coaches, athletic administrators and athletes. A summary of OCR's findings and observations follows.

Applicable Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.41(a), specifically prohibits discrimination on the basis of sex in athletic programs offered by recipients of financial assistance from the Department. The regulation implementing Title IX, at 34 C.F.R. § 106.41(c),

¹<http://www.lewisu.edu/welcome/facts.htm>; the University also has other smaller campus locations, and an online presence.

²The Great Lakes Valley Conference sanctions 21 men's and women's sports and is composed of 16 Division II institutions in Illinois, Wisconsin, Indiana, Missouri and Kentucky.

³The Midwest Intercollegiate Volleyball Association is composed of Division I and Division II institutions in Illinois, Indiana, Missouri, Ohio and one institution in Arizona.

states that a recipient that operates or sponsors athletic teams must provide equal opportunity for members of both sexes.⁴

In this case, OCR examined whether the University provides male and female students equal opportunities to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1). The regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

In addition, OCR examined whether the University provides its athletes reasonable opportunities for financial assistance 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 regulation implementing Title IX, 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 allowances (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)).

Facts and Analysis

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

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 34 C.F.R. § 106.41(c)(1). OCR also considered whether the selection of sports and levels of competition at the University effectively accommodate the interests and abilities of both sexes.

OCR applies the following three-part test (“Three-Part Test”) to assess whether an institution is providing equal participation opportunities for individuals of both sexes with respect to the selection of sports:

⁴In addition to the regulation implementing Title IX, OCR used principles articulated in the OCR “Intercollegiate Athletics Policy Interpretation” (Policy Interpretation), issued December 11, 1979 and published at 44 *Fed. Reg.* 71,413 (1979), which is found online at <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; 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 that is demonstrably responsive to the developing interests and abilities of that sex; 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 interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

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. If an institution meets any part of the Three-Part Test, then OCR will determine that the institution provides each sex with equitable opportunities to participate. If an institution's athletics program also equitably provides each sex with the level of competition reflective of their respective abilities, then OCR will determine that the institution is effectively accommodating athletic interests and abilities.

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. OCR will also 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; i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number that might vary by institution.

During its investigation, OCR established that in 2015-16, the athletic participation rates in sports offered to men and women at the University were as follows:

Athletic Participants: 2015-16		
# Men	Sport	#Women
29	Baseball/Softball	21
15	Basketball	13
23	Cross Country	23
33	Soccer	25
12	Golf	11
12	Tennis	8
21	Swimming	26
52	Indoor Track & Field	45
52	Outdoor Track & Field	45
22	Volleyball	19
271	Total	236

In addition, OCR compared the men’s and women’s full-time undergraduate enrollment and athletic participation rates at the main campus during the 2015-16 academic year:

Athletic Participation & Undergraduate Enrollment 2015-16				
Gender	Athletic Participation Opportunities		Full-time Undergraduate Enrollment	
Men	271	53.5%	1,835	44.9%
Women	236	46.5%	2,251	55.1%
Total	507		4,086	

In 2015-16, females were the underrepresented sex in the University’s athletics program. OCR observed that the disparity between the enrollment and athletic participation rates was 8.6 percentage points, which represented as many as 96 additional female participation opportunities that would have been necessary to add to achieve exact proportionality without cutting opportunities for men.

However, OCR requires substantial proportionality between the participation and enrollment rates, not exact 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. As a frame of reference for determining the size of a viable team, OCR considers the average size of intercollegiate teams offered for the underrepresented sex at an institution. In 2015-16, the average size of women’s intercollegiate teams at the University was 23.6 female athletes, well below the female participant disparity of 96 athletes.

Based on the foregoing, the University did not provide information to show that in 2015-16, intercollegiate level participation opportunities for male and female students were provided in numbers substantially proportionate to their respective enrollments.

Part Two: History and Continuing Practice of Program Expansion

Under Part Two of the Three-Part Test, an institution may demonstrate compliance by showing that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. Part Two examines an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

OCR considers the following factors, among others, as evidence indicating an institution's history of program expansion is demonstrably responsive to the developing interests and abilities of the underrepresented sex: a record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex; a record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex; and an affirmative response to requests by students or others for 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) and 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.

According to information provided by the University, it created all of its women's sports teams after the enactment of Title IX. No new intercollegiate sports have been added for women since 1997. During that same time period, the University added 8 men's sports to its athletics program.

The University's record since 1972 of adding intercollegiate sports to its athletics program is reflected in the chart below:

University Sports Added⁵ Since 1972		
Men's Sport	Year	Women's Sport
	1974	Volleyball
		Basketball
	1976	Softball
Golf	1983	
Cross Country	1986	Cross Country
		Soccer
Tennis		Tennis
Track and field	1988	Track and field
	1992	Golf
Volleyball	1994	
	1997	Swimming
Swimming	1998	

According to the University, there have been no requests for the addition of intercollegiate sports, or elevation of intramural or club sports for women.

The University offers to its male and female students intramural and club level sports and activities. Intramural sports and activities are offered through the University's Student Recreation and Fitness Center. The University publishes on its website its policies, procedures and forms to request the addition of intramural and club sports.⁶ The University has not denied creation of a club sport request, nor has it unilaterally created a club sport without an outside sponsor. The University has no record of elevating an intramural sport to club or intercollegiate status, or of elevating a club sport to intercollegiate status.

In 2007, the University founded a Gender Equity Committee (Committee), which was charged with evaluating and reviewing gender equity issues related to the University's athletics program. The Committee identified inequities in the accommodation of athletic interests and abilities and developed a Gender Equity Plan designed to address the inequities in athletics within three to five years through the use of roster management, as well as the addition of other athletics programs for women. The Committee also recommended yearly assessments of student athletic interests and abilities. No annual assessments were conducted until 2012, and no sports were added for women. The Committee is no longer in existence.

In 2011, the University's athletic conference, the GLVC, announced the addition of football as a sanctioned championship sport. In response, the University created a Sports Expansion Task Force (Task Force) to investigate the addition of football as an intercollegiate sport. The University charged the Task Force to determine what effect the addition of sports would have upon the University's current gender equity status. According to its initial report, the Task Force determined that the University should add sports only if the resulting program effectively accommodated the interests and abilities of all its students. However, the Task Force reported

⁵Men's basketball and baseball were intercollegiate men's sports at the University prior to 1972.

⁶<http://www.lewisu.edu/studentservices/fitnesscenter/intramurals.htm> and <http://www.lewisu.edu/studentservices/fitnesscenter/clubsports/index.htm>

that it did not have data to determine the interests and abilities of its students and therefore, could not gauge current program compliance. In spring 2012, therefore, the University conducted a survey of the athletics program. Although the 2012 survey information suggested that there was at least some interest among women in badminton, bowling, football, gymnastics, ice hockey, lacrosse, skiing, and water polo, the University did not add any intercollegiate sports for women or conduct further assessments.

During this investigation, the University did not provide OCR with evidence that it is currently implementing a plan of program expansion that was responsive to developing interests and abilities of females. The University also has not published on its website a procedure to request the addition or elevation of sports to intercollegiate sports. However, it has published on its athletics page information about Title IX,⁷ including a direction to contact the Athletic Director and Title IX Coordinator with concerns about gender equity in athletics.

In this case, the evidence supports that the University added its last women's intercollegiate sport in 1997, that there is no plan of athletic program expansion for women, and that the University has no record of adding women's teams and/or upgrading to intercollegiate status intramural sports and/or clubs for women. Therefore, the University has not demonstrated a history and continuing practice of program expansion that has been demonstrably responsive to the developing interests and abilities of females.

Part Three: Full and Effective Accommodation of Interest and Abilities

In determining compliance with Part Three of the Three-Part Test, OCR determines whether, despite being unable to demonstrate substantial proportionality or a history and continuing practice of program expansion, an institution is nevertheless fully and effectively accommodating the interests and abilities of the underrepresented sex. In making this determination, OCR considers whether there is: (a) unmet interest in a particular sport; (b) sufficient ability to sustain a team in the sport, and (c) a reasonable expectation of competition for the team.

An institution may determine the athletic interests and abilities of students by nondiscriminatory methods of its 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.

Unmet Interest

In determining whether there is unmet interest and ability to support an intercollegiate team in a particular sport, OCR uses a broad range of indicators, including: whether the institution uses nondiscriminatory methods of assessment to determine the athletic interests and abilities of students; whether a viable team for the underrepresented sex recently was eliminated; multiple

⁷http://www.lewisflyers.com/sports/2015/4/2/GEN_0402155650.aspx

indicators of interest; multiple indicators of ability; and the frequency of the institution's conducting assessments.

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'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.

Sufficient Ability

OCR assesses whether there is sufficient ability among interested students of the underrepresented sex to sustain a team in a sport by examining factors such as: the athletic experience and accomplishments (in previous interscholastic, intercollegiate, club or intramural competition) of students and admitted students interested in playing the sport; the 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 indicated that it has the potential to sustain an intercollegiate team.

OCR also examines indicia of ability, including: participation in other sports, intercollegiate, interscholastic or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered; and tryouts or other direct observations of participation in the particular sport in which there is interest.

Neither a poor competitive record, nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that interested students and admitted students have the potential to sustain an intercollegiate team.

Available Competition

OCR evaluates whether there is a reasonable expectation of intercollegiate competition for the team in the institution's normal competitive regions. In evaluating available competition, OCR

considers available competitive opportunities in the geographic area in which the institution's athletes primarily compete, including: competitive opportunities offered by other schools against which the institution competes; and competitive opportunities offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete.

Evidence of Unmet Interest and Abilities at the University

OCR found no information that the University has recently eliminated a viable team for women. As part of its investigation of this complaint, OCR surveyed current male and female student athletes⁸ about unmet interest in sports. No students surveyed identified men's or women's intercollegiate sports that the University should offer, although one student suggested that the University should expand its swimming program to offer a diving component.

Athletic Clubs and Intramural Sports

The University offers both club and intramural level sports for its students. According to the University, it offers the following club opportunities for women in sports offered at the intercollegiate level but not at the University through its intercollegiate athletics program: water polo (coed), ultimate frisbee, lacrosse, and rugby. In 2015-16, women participated in coed water polo (4 female participants) and women's ultimate frisbee (8 female participants). The University created a women's lacrosse club during the 2013-14 and 2014-15 school years; while there was a sufficient number of students in 2013-14, not enough women signed up to play in 2015-16. According to its website, the University continues to sponsor a women's lacrosse club that offers instruction and practices weekly, but it does not compete.

In 2015-16, the University offered several intramural sports that are also offered at the intercollegiate level but not at the University: beach volleyball (10 female participants), badminton (36 female participants), and bowling (13 female participants).

The NCAA sanctions beach volleyball, bowling, gymnastics, ice hockey, lacrosse, skiing and water polo. It has identified rugby as an emerging sport⁹ for women. According to the University, the majority of its students are from Illinois. Sports sanctioned by the Illinois High School Athletics Association for girls, which are not offered to women at the University include: badminton, bowling, gymnastics, lacrosse and water polo.

Based on the results of the 2012 survey and participation in club and intramural sports on campus, as well as in Illinois high schools, OCR identified possible unmet interest for women in badminton, beach volleyball, bowling, gymnastics, ice hockey, lacrosse, rugby, skiing and water polo. Therefore, OCR considered whether there was ability and available competition in those sports.

⁸OCR received completed surveys from 130 male and female athletes (with a minimum of 6 athletes from every male and female team).

⁹According to the NCAA, a sport is recognized by the NCAA as an emerging sport to help schools provide more athletics opportunities for women, "sport-sponsorship options" for the institutions, and to help the sport "achieve NCAA championship status. See, <http://www.ncaa.org/about/resources/inclusion/emerging-sports-women>

- *Badminton*

Badminton is an Illinois High School Athletics Association (IHSA) sanctioned sport. In 2015-16, 94 high schools in Illinois offered badminton for 3,955 participants.¹⁰ Badminton was a NCAA emerging sport, but it did not succeed. Badminton is offered at several intercollegiate institutions as a club sport under the auspices of organizations such as USA Badminton and the Intercollegiate Badminton Association. The University offers badminton but only as a one day co-ed intramural mixed-doubles tournament. According to the University, 36 women participated in the one day tournament in 2015-16. Students have not requested the elevation of badminton to a regular intramural, club or intercollegiate status.

- *Beach Volleyball*

Beach volleyball is also called sand volleyball. It is not an IHSA-sanctioned high school sport and no Illinois high schools reported offering the sport to girls in 2015-16. In January 2015, the NCAA recognized Beach Volleyball as a Division II sport. According to the University, there is insufficient intercollegiate competition in Beach Volleyball; OCR learned that eight Division II schools offer beach volleyball, but the schools are not located within a geographic area similar to the GLVC's normal geographic competitive region, although there are a few opportunities in a geographic area similar to the MIVA. University students have not requested the elevation of sand/beach volleyball to club or intercollegiate status.

- *Bowling*

Bowling is an IHSA sanctioned high school sport in Illinois. In 2015-16, 226 Illinois high schools offered bowling for 3,098 female participants. According to the University's 2012 survey, women showed interest and ability in bowling. Bowling is a co-ed intramural activity, and in 2015-16, 13 women participated in it. Nationwide, there are 21 NCAA Division II bowling teams. Five Division II teams are located within a geographic area similar to the GLVC's normal geographic competitive region, including 3 GLVC members. The University acknowledged unmet interest, ability and available competition for women in bowling.

- *Gymnastics*

Gymnastics is an IHSA sanctioned sport. In 2015-16, 76 Illinois high schools sponsored girls' interscholastic gymnastics teams with a total of 1,753 participants. Nationwide, there are only 9 NCAA Division II gymnastics teams, none in the GLVC. The closest are located in Minnesota and Missouri, which are within a geographic area similar to the GLVC's normal geographic competitive region. Although gymnastics was reported in the 2012 survey as one of the top sports in terms of female athletic interest and past participation, it placed in the bottom in terms of current participation, and highest in terms of needing to develop abilities. No students have requested the establishment of a gymnastics team for females.

¹⁰State participation rates are from the National Federation of High Schools (www.nfhs.org).

- *Ice Hockey*

Ice hockey is not an IHSA-sanctioned high school sport and no Illinois high schools reported offering it to females as an interscholastic sport in 2015-16. It is offered as a sport for girls at 13 Illinois high schools under the auspices of Amateur Hockey Association Illinois/USA Hockey. Although women have expressed an interest in ice hockey, none reported participating in the sport at the high school level and there is no other information supporting interest in a women's ice hockey team at the University's intramural, club or intercollegiate level. OCR identified only 5 schools that offer women's Division II ice hockey, one is in Missouri, but the rest are on the east coast.

- *Lacrosse*

In April 2016, the IHSA announced that girls' lacrosse would be elevated to a sanctioned interscholastic sport beginning in spring 2018. In 2015-16, 63 Illinois high schools sponsored girls' interscholastic lacrosse teams with a total of 1,749 participants. There are currently three schools in the GLVC that compete at the NCAA Division II level in women's lacrosse. There are currently 103 NCAA Division II women's lacrosse teams in the United States; approximately 26 schools are located within 500 miles of the University.

The evidence shows that the University task force selected lacrosse for consideration as an intercollegiate women's sport prior to the 2012 survey. According to data provided by the University, in 2013-14, it offered a women's club lacrosse team, which had 26 participants. By 2014-15, there were only 6 women who signed up to play club lacrosse. The University offers a lacrosse club that is instructional only, with no competition. Although no requests have been made to elevate the University's women's lacrosse club to intercollegiate status, the University acknowledges that there is plenty of intercollegiate competition in lacrosse and that it could recruit interested and able athletes to form an intercollegiate team. OCR noted that lacrosse placed in the top 15 sports for past high school participation, suggesting that at least some women on campus have the ability to play lacrosse. The University acknowledged possible unmet interest in lacrosse and noted that with its recruiting practices, it could offer a women's lacrosse team with sufficient available competition.

- *Rugby*

Rugby is not an IHSA-sanctioned high school sport and no Illinois high schools reported offering the sport to females as an interscholastic sport in 2015-16. Through Rugby Illinois and USA Rugby, Illinois offers about a dozen rugby clubs for high school girls, and rugby is a NCAA emerging sport for women. There are 4 Division II schools that offer intercollegiate rugby, none within the GLVC or within a geographic area similar to the GLVC's normal geographic competitive region.¹¹ According to the University, no female students have requested to elevate the University's women's rugby club to intercollegiate status.

¹¹The University reportedly offered a new women's rugby club for the 2016-17 year.

- *Skiing*

Skiing (alpine, Nordic, or snowboarding) is not an IHSA-sanctioned high school sport and no Illinois high schools reported offering the sport to girls as an interscholastic sport in 2015-16. In the survey, women reported being interested in skiing but none indicated that they had participated in competitive skiing at the high school level and there is no competitive intramural or club skiing at the University. No women have requested to create an intercollegiate ski team. There are only 7 Division II women's ski teams nationwide, the closest two of which are in northern Michigan, where there are hills sufficient for practices and competition.

- *Water Polo*

Water polo is an IHSA-sanctioned sport. In 2015-16, 76 Illinois high schools sponsored girls' interscholastic water polo teams with a total of 1,961 participants. There are currently only 9 NCAA Division II women's water polo teams but none is located within 500 miles of the University. At the University, there is a co-ed water polo club, and 4 women participated in the club in 2014-15 and again in 2015-16. No students have requested the elevation of the club to intercollegiate status.

Levels of Competition

If an institution's athletics program equitably provides each sex with the level of competition reflective of their respective abilities, OCR will determine that the institution is effectively accommodating athletic interests and abilities.

The Policy Interpretation outlines two factors to assess whether the quality of competition provided to male and female athletes equally reflects their abilities:

- (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 of that sex.

Overall, OCR's investigation showed that in 2015-16, the University's teams men's teams competed in 68.4% of the maximum allowable Division II competitions while the University's women's teams competed in 69.6% of the maximum allowable Division II competitions. The competitive schedules for men's and women's teams, on a program-wide basis, afforded proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities.

Analysis and Conclusion- Accommodation of Interests and Abilities

OCR observed with respect to the levels of competition, that the University's 2015-16 competitive schedules for men's and women's teams, on a program-wide basis, afforded proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities. However, OCR also found with respect to the selection of sports, that females are underrepresented in the University's athletics program and there is no history and continuing practice of program expansion that is demonstrably responsive to the developing interests of females. OCR noted that there is sufficient unmet interest, ability and available competition for the University to offer an intercollegiate women's bowling team, and that there appears to be sufficient unmet interest, ability and available competition for the University to offer an intercollegiate women's lacrosse team. **Therefore, the preponderance of the evidence indicates that the athletic interests and abilities of females, the underrepresented sex, are not fully and effectively accommodated by the present program, and accordingly, the male and female students are not provided an equal opportunity to participate in in the University's intercollegiate athletics program as required by 34 C.F.R. § 106.41(c)(1).**

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

The regulation implementing Title IX, at 34 C.F.R. § 106.37(c), provides that “[t]o 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.”

In determining compliance with this provision, OCR examined whether the University made proportionately equal amounts of athletic financial assistance (AFA) available to the men's and women's athletics programs. OCR divided the amounts of aid available for the members of each sex by the numbers of male and female participants in the athletics program and compared the results. An institution is considered to be in compliance if the comparison results in substantially equal amounts, or if a resulting disparity can be explained by adjustments that take into account legitimate, nondiscriminatory factors.¹² If any unexplained disparity in the scholarship budgets for athletes of either sex is one percentage point or less of the entire budget for athletic scholarships, then there will be a strong presumption that the 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 percentage point is in violation of the regulation implementing Title IX.

OCR evaluates each case in terms of its particular facts; for example, at those universities where 1% of the entire athletic scholarship budget is less than the value of one full scholarship, OCR will presume that a disparity of up to the value of one full scholarship is equitable and nondiscriminatory. Even if an institution consistently has less than a 1% disparity, the presumption of compliance with Title IX might still be rebutted if, for example, there was direct evidence of discriminatory intent.

¹² A "disparity" in awarding AFA refers to the difference between the aggregate amount of money athletes of one sex received in one year, and the amount they would have received if their share of the entire annual budget for athletic scholarships had been awarded in proportion to their participation rates.

In this case, the University awards AFA to some full-time undergraduate students based on athletic ability. According to the University, it has no formal policies or procedures for awarding AFA. In 2015-16, a full athletic grant at the University was \$40,100.00, which was equivalent to full-time tuition, room and board, books and supplies, and fees. There are no differences for in-state and out of state students in the amount of tuition.

In 2015-16, the University awarded a total of \$3,213,515 in AFA. Of this amount, \$1,618,475, or 50.4%, was awarded to female athletes who composed 173 or 45.8% of the 378 athletes. Male athletes, who composed 205, or 54.2% of the 378 athletes, received \$1,595,040, or 49.6% of the AFA. In 2015-16, the disparity was greater than 1%; the difference of 4.6% favored women. OCR also reviewed the AFA awards for 2013-14 and 2014-15; each successive year the disparity in AFA favored female athletes, grew each year in percentage and amount, always surpassing 1%. Had AFA been awarded in proportion to the participation rates by sex in 2015-16, then males would have received about \$146,685 more AFA than they were awarded. To explain the disparity in AFA, the University states that it has distributed AFA to male and female athletes in roughly equal amounts.

Analysis and Conclusion- Athletic Financial Assistance

During the 2013-14, 2014-15 and 2015-16 academic years, the disparities between AFA awards and athletic participation rates favored females, were greater than 1%, and grew each year in percentage and amount. The University asserted that it had a policy to split AFA roughly evenly between male and female athletes. However, equal distribution of AFA is not a legitimate non-discriminatory reason for a disparity in the awarding of AFA when it runs contrary to the requirement of the Title IX regulation at 34 C.F.R. §106.37(c) that requires AFA to be distributed in reasonable proportion to the number of students of each sex participating in intercollegiate athletics. **Therefore, the preponderance of the evidence indicates that male and female students were not provided an equal opportunity in the provision of athletic financial assistance, as required by 34 C.F.R. § 106.37(c).**

III. Other Athletic Benefits and Opportunities

In ensuring compliance with Title IX, OCR also examined the following 11 components of the University's program to ensure that it is providing equal opportunity for members of both sexes in its intercollegiate athletics program, in accordance with 34 C.F.R. § 106.41(a) and (c). OCR specifically examined the following areas:

1. Equipment and supplies
2. Scheduling of games and practice times
3. Travel and per diem
4. Opportunity to receive academic tutoring and assignment and compensation of tutors
5. Opportunity to receive coaching and assignment and compensation of coaches
6. Provision of locker rooms, practice, and competitive facilities
7. Provision of medical and training facilities and services
8. Provision of housing and dining facilities and services

9. Publicity
10. Support Services, and
11. Recruitment of student-athletes

OCR evaluates compliance with each program component 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.

OCR examines each factor relating to the benefits, opportunities or treatment of male and female athletes in a specific program component. Once each factor has been analyzed, OCR makes a determination for that program component. OCR considers whether the same or similar benefits, opportunities or treatment are provided for all students; or if not, whether the differences have a negative effect on one sex that results 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 concluded 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 the disparities 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, general equipment and supplies, instructional devices, and minor conditioning and weight training equipment. In assessing compliance in this component, OCR considers the: (a) quality; (b) amount; (c) suitability; (d) maintenance and replacement; and (e) availability of equipment and supplies.

In assessing the University's compliance with respect to this component, OCR reviewed during an on-site visit the equipment and supplies provided for University athletes. OCR also obtained statements from coaches and surveyed student-athletes, athletic department administrators and coaches regarding equipment and supplies.

OCR examined the budgets for equipment and supplies and observed that in 2015-16, there was a slight per athlete difference favoring men overall in expenditures. In 2015-16, the University budgeted \$57,500.00 for its men's teams and \$47,000.00 for its women's teams to spend on equipment and supplies. Overall, men were budgeted an average of \$212.18 per athlete and the women were budgeted an average of \$199.15 per athlete (a difference of \$13.03 less per female athlete). The evidence showed that comparable men's and women's teams at the University, other than men's and women's soccer, had roughly comparable equipment and supplies budgets. The funding difference favoring men in the total budgeted amount for equipment and supplies was partially explained by the fact that men's soccer equipment and supplies are shared with the women's team.

In addition, OCR examined the quality, amount, suitability, availability, maintenance and replacement of equipment and supplies provided to men's and women's teams. OCR surveyed student athletes and coaches about equipment and supplies and inspected equipment and supplies provided to each men's and women's team to determine whether any disparities existed on the basis of sex. Although women received slightly less funding overall than men in the provision of equipment and supplies, OCR's team by team inventory indicated that women received slightly more equipment and supplies. No coach or player indicated to OCR that he or she was not able to replace worn uniforms or broken or unusable equipment and supplies.

Regarding maintenance of uniforms and other equipment and supplies, the evidence showed no pattern on the basis of sex in the laundering of game or practice uniforms. OCR's on-site inspection showed that each men's and women's team had adequate storage space for their equipment and supplies, and it uncovered no other unexplained disparities on the basis of sex with the provision of equipment and supplies. Accordingly, there is insufficient evidence that the University failed to provide equivalent opportunities to men's and women's teams in the provision of equipment and supplies, as required by 34 C.F.R. § 106.41(c)(2).

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

The Title IX regulation at 34 C.F.R. §106.41(c)(3) requires a recipient to provide male and female athletes with equal opportunities in the scheduling of games and practice time. The Policy Interpretation lists the following five factors to be assessed in determining compliance in 1) the number of competitive events per sport; 2) the number and length of practice opportunities; 3) the time of day competitive events are scheduled; 4) the time of day practice opportunities are scheduled; and 5) opportunities to engage in pre- and post-season competition.

NCAA Division II guidelines limit sponsored sports to a certain number of contests each year as part of the sport's competitive season, as outlined in the chart below:

NCAA Division II Competitive Event Limits		
Men		Women
Number of Competitive Events	Sport	Number of Competitive Events
50	Baseball/Softball	56
26+4	Basketball¹³	26+4
7	Cross Country	7
18	Soccer	18
21	Golf	21
25	Tennis	25
16	Swimming	16
18	Indoor Track and field	18
18	Outdoor Track and field	18
26	Volleyball	26

In 2015-16, University men’s teams engaged 213 competitive and post season events, and women’s teams engaged in 224 competitive and post season events. Men’s teams overall played in 26 fewer than the maximum number of men’s competitions in 2015-16 and women’s teams overall played in 27 fewer than the maximum number of women’s competitions in 2015-16, a difference of one competition. No coaches or players expressed concerns to OCR about the number of competitive events scheduled for their respective teams.

Data received from the University indicated that all men’s and women’s teams started practice on the earliest date allowed by the NCAA for each sport. According to practice schedules reviewed by OCR, teams held regularly scheduled in-season practices, and most men’s and women’s teams reported that they practiced on average two to four hours during a day, four to five days per week. While the length and time of day for practices varied by team OCR found the number and length of practices for men’s and women’s teams were comparable. Coaches and male and female athletes surveyed by OCR reported comparable lengths and numbers of practices and indicated that the number and length of practice sessions were sufficient for their teams, although the softball coach stated that another hour of practice each day would be optimal.

The time of day teams practiced also varied by team. Some teams like men’s and women’s volleyball and men’s and women’s swimming, practiced later in the day (and into the evening) because of the availability of indoor facilities, while some sports, like men’s and women’s tennis, and baseball and softball, scheduled practice times to take advantage of available natural lighting outdoors. No male or female athletes expressed concerns about the number, length, and time of day of their teams’ practice opportunities.

¹³The NCAA limits the number of pre-season exhibition events for basketball to four.

OCR reviewed the time of day competitive events were scheduled for the 2013-14, 2014-15 and 2015-16 academic years to determine whether events were scheduled equivalently in prime time for men's and women teams. "Prime time" for athletic competitions is typically defined as evenings that precede days without classroom instruction, usually Friday and Saturday evenings.

In 2015-16, men's basketball games were played in the evenings, while women's basketball games were played on Saturday afternoons or as the first game of a doubleheader. Men and women played similar numbers of soccer matches on Saturdays, but the men's games were typically played at night in prime time, while the women's Saturday games were played in the afternoon. Because it had lights on the field, baseball could schedule games at night or play into the dark, while softball, which had no lights, could not.

In addition, OCR reviewed the opportunities provided to male and female athletes to engage in pre- and post-season competitions. Team schedules and interviews with athletes indicated that teams were allowed to participate in pre-season events. No coaches or athletes reported to OCR that they were denied the opportunity to participate in pre-season events. As for post-season competition, the University reported that there has been no occasion when an individual or team has qualified for post-season competition and been denied the opportunity to participate. OCR's review of University team schedules for 2015-16 indicated that all men's and women's teams participated (when they qualified) in their respective conference championships, NCAA regionals, and NCAA championships.

Analysis and Conclusion - Scheduling of Games and Practice Time

As to the scheduling of games and practice time for its student-athletes, the University expressed interest to resolve this issue prior to the completion of OCR's investigation. As noted above, the University signed the Agreement, which when fully implemented, will result in the University's compliance with the requirements set forth in Title IX in regard to the University's provision of equal athletic opportunities to students of both sexes in the scheduling of games and practice time.

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

The Title IX regulation requires recipients to provide equal athletic opportunities to males and females in the provision of travel and per diem allowances. In assessing compliance in this component, OCR considered at the University its: (a) modes of transportation; (b) housing furnished during travel; (c) length of stay before and after competitive events; (d) per diem allowances; and (e) dining arrangements.

According to the Athletic Director (AD), there is no set per diem allowance for any team at the University. The AD asserted that like all other line items in a coach's budget, the travel line item encompasses all travel, overnight stays, and meals for that team. A coach may opt for a hotel with more amenities in exchange for less expensive meals. A coach may also use money from any other line item to supplement travel and meals. According to the AD, as well as a review of team schedules, most away contests are held in GLVC and MIVA states.

OCR noted that many of the University's similar men's and women's teams often travelled together. For example, men's and women's tennis often travelled together because they played both teams against the opposing schools' men's and women's tennis teams. By traveling together, the two teams combined travel budgets to use on higher quality hotels, modes of transportation, and/or food. Teams with combined partial travel schedules included tennis, track and field, basketball, swimming, cross country and golf.

In 2015-16, the University athletic travel budget was \$761,500.00, with 51.7% allocated to men's teams (men composed 53.5% of athletes) and 48.3% to women's teams (women composed 46.5% of the athletes). In 2015-16, the University budgeted \$26,500.00 more overall for men's team travel than women's team travel. Women's basketball, tennis and swimming received higher amounts than their male counterparts. The track and field teams had the same travel budgets. The remaining men's teams had higher travel budgets than their female counterparts, with the most significant difference being that the men's volleyball team received \$27,600 more than the women's volleyball team. The University explained that the men's volleyball team travels to Arizona for MIVA competition and the women's team does not as it is a GLVC sport.

Almost all coaches surveyed stated that their travel budgets were not sufficient to meet their teams' needs. This characterization applied to 83.5% of the men's teams and 86.1% of the women's teams. Only the men's and women's tennis coaches and men's and women's soccer coaches believed that their travel budgets were sufficient. Although men's teams received more travel funds overall, on a per athlete basis, the University spent slightly more on women's team travel in that in 2015-16, the University budgeted \$1,453.87 per male athlete and \$1,557.20 per female athlete, a difference, on average, of \$103.33 more per female athlete.

OCR considered for men's and women's teams the modes of transportation, housing furnished during travel, length of stay before and after competitive events, per diem allowances, and dining arrangements, and found no significant differences in the treatment of male or female athletes on the basis of sex except for in housing furnished during travel.

The distance and travel times to the University's GLVC opponents range from 87 to 484 miles, with a drive time from 1 hour, 50 minutes to 7.5 hours. Only two schools are less than a 2 hour drive, and 3 are over seven hours. Most schools are from 4 to 6 hours away. The distances for men's volleyball in the MIVA are similar to those of the GLVC, except when it competes in Phoenix, Arizona, which is 1,724 miles from the University. According to the AD, the University's athletic teams take school vans and/or charter busses to away games within the conference. Coaches confirmed that teams generally used charter busses (for larger teams or combined teams) and school vans (for smaller teams of 10 athletes or less). For some trips, teams flew to their competitions. Data provided to OCR indicated that men's and women's teams each flew 5% of the time and drove 95% of the time. Athletes did not report differences in the modes of travel for men's and women's teams.

For hotels, the GLVC contracted with "preferred hotels" located near each host school for visiting teams to use while on travel and the University uses these hotels. More men's teams than women's teams reported staying 2 athletes to a room while more women's teams than men's

teams reported saying 3 or 4 athletes to a room. The amount of travel, numbers of overnight stays, and modes of travel, were substantially similar for men's and women's teams. Although numerous coaches expressed concerns about the amounts of their travel budgets, the concerns seemed to be similar among men's and women's teams.

Coaches of men's and women's teams who were surveyed by OCR asserted that generally, whether a team stayed the night before a contest, or the night after, depended on the distance to be travelled and the team's schedule. Coaches of men's and women's teams asserted that their teams typically arrived one and a half to two hours before an away contest. According to the men's and women's teams coaches surveyed, if a contest was less than three hours away, the team would generally not stay overnight. Based on team travel records provided by the University, OCR found no evidence to suggest that there was a difference on the basis of sex in the length of stay before and after competitive events.

According to the University, it did not set per diem allowances for teams when they were on travel. Men's and women's teams generally stayed in hotels that offered free breakfast in the morning (or complementary snacks in the evening). Otherwise, all male and female athletes stated that while traveling to and from competitions, they dined out together as a team. No male or female athletes stated that the food was substandard or that they did not receive enough to eat. No coaches and/or male or female athletes criticized the quality and/or quantity of food provided during trips.

Analysis and Conclusion - Travel and Per Diem Allowance:

As to travel and per diem allowances for athletes, the University expressed interest to resolve this issue prior to the completion of OCR's investigation. As noted above, the University signed the Agreement, which when fully implemented, will result in the University's compliance with the requirements set forth in Title IX in regard to the University's provision of equal athletic opportunities to students of both sexes in the provision of travel and per diem allowances.

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

The Title IX regulation requires recipients to provide equal athletic opportunity for members of both sexes regarding the opportunity to receive academic tutoring and the assignment and compensation of tutors. In assessing compliance in this area, OCR examined for male and female athletes the availability of tutoring; procedures and criteria for obtaining tutorial assistance; tutor qualifications; tutor training, experience, and other qualifications; hourly rate of payment by nature of subjects tutored; pupil loads per tutoring season; tutor experience; and other terms and conditions of tutor employment.

According to the AD, there were no special or different tutoring services available to athletes that were not available to the rest of the University student population. If an athlete's grade point average fell below a certain point, then the athlete was required to go to the student tutoring

center, check in, and receive assistance. The University's tutorial services¹⁴ are offered by peer tutors through methodologies including individual assistance and group sessions. Like other students, athletes may schedule tutoring sessions online. A record of the athlete's attendance is provided to the coach for review. Coaches and athletes surveyed confirmed that if a student's grade point average fell below a certain level, the student was referred by the coach to the University's learning center for tutoring. No male or female students and/or coaches surveyed by OCR expressed concerns about access to, quality of, and/or amount of tutoring. The University reported¹⁵ in 2015-16 that it had a student-athlete academic success rate of 90% and that its men's and women's teams had a cumulative grade point average of 3.33.

Analysis and Conclusion – Provision of Academic Tutoring

OCR observed no differences for male and female athletes in the opportunity to receive academic tutoring or in the assignment and compensation of tutors. Based on the foregoing, there is insufficient evidence to conclude that the University has violated Title IX or its implementing regulations at 34 C.F.R. § 106.41(c)(5) & (6) with respect to the provision to male and female athletes of academic tutoring.

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

The Title IX regulation requires recipients to provide equal athletic opportunity for members of both sexes regarding the opportunity to receive coaching and the assignment and compensation of coaches. In general, a violation will be found with respect to coaching only where compensation denies male or female athletes coaching of equal quality, nature or availability.

In determining compliance with the opportunity to receive coaching, OCR assesses the relative availability of full-time coaches; the relative availability of part-time and assistant coaches; and the relative availability of graduate assistants. The University provides each sport with a number of coaching positions. Every team has a paid head coach, plus some have paid assistant coaches. In 2015-16, the University also provided for each sport one graduate student position as a part-time assistant. The graduate student received a stipend, tuition, and a meal plan. The evidence showed that in 2015-16, the University budgeted identical an amount for the part-time graduate position for each men's and women's sport.

OCR compared the ratio of coaches to male and female athletes and determined that in 2015-16, the ratio of head coaches (1 per team) to athletes was 1:27 for men and 1:24 for women. The ratio of all paid head and assistant coaches was 1:12 for men and 1:12 for women. Among full-time, part-time, paid and volunteer assistant coaches by sport, the ratio in 2015-16 was 1:12 for women and 1:12 for men. The largest discrepancy between comparable men's and women's sports was between baseball and softball in that softball had one assistant and baseball had 3 assistants. As a result, in 2015-16, there was a ratio of 1 baseball coach for every 7 baseball players as compared to 1 softball coach for every 11 softball players.

¹⁴<http://www.lewisu.edu/resources/larc/tutorialservices.htm>

¹⁵<https://www.lewisu.edu/news/Newsarticle.htm?PArticleID=10523>. The "academic success rate" is a NCAA term measuring the rate at which athletes graduate from a college.

Most of the male and female athletes surveyed by OCR indicated that they had a sufficient number of coaches for their respective teams and that they were “very satisfied” or “satisfied” with the availability of the coaches. Male and female athletes on similar teams who share coaches reported that they would like more coaches for the cross country and swimming teams (representing 16.2% of males and 20.7% of females). Female softball athletes articulated a need for more coaches.

In determining compliance with the assignment of coaches to men’s and women’s teams, OCR considered: the experience, training and other professional qualifications of coaches; and the professional standing of coaches.

In 2015-16, the women’s teams head coaches averaged 5.9 years’ experience while the men’s teams head coaches averaged 9.5 years’ experience. The difference in average years of experience resulted from the loss at the end of the previous year of two long-time women’s head coaches (softball and basketball), who were replaced by head coaches with less tenure. Despite having fewer years’ experience, the new women’s basketball and softball coaches were well qualified for their positions.

The same individuals coached the men’s and women’s teams for cross country, golf, tennis, swimming, and indoor/outdoor track and field. Therefore, those men’s and women’s teams had equal treatment in terms of the experience, training, professional qualifications, and professional standing of their coaches. OCR noted that among other coaches, the women’s soccer head coach had significantly less experience than the men’s soccer head coach. The evidence showed, however, that the women’s soccer head coach was well qualified for the position.

In determining compliance with respect to the compensation of coaches, OCR considered: the rate of compensation (per sport, per season); the duration of contracts; conditions relating to contract renewal; experience; the nature of coaching duties performed; working conditions; and other terms and conditions of employment.

According to the University, there are no written policies or procedures for determining coaching salaries, however, the AD determines the budget for coaches’ salaries and considers “market rate,” individual performance, seniority at the University, competencies, work experience, education, and workload and duties in the selection process. All head coaching positions are full-time, with no other duties unrelated to coaching and team administration. All coaching contracts are one year in duration and are negotiated from year to year. Other than the standard insurance and retirement packages available to all other University employees, there are no other incentives, winning bonuses, homes, and/or cars that are part of the coach compensation packages.¹⁶

According to information obtained by OCR, in 2015-16, the University paid \$781,040 for its head coaches. Women composed 46.5% of the athletes and their head coaches received 45.6% of

¹⁶Teams can also offer summer sports camps if the team follows University procedures to rent facilities. Men’s and women’s volleyball, soccer, and basketball offer summer youth sports camps. The salaries do not include coach compensation for the camps.

the salaries, while men composed 53.5% of all athletes and their team head coaches received 54.4% of the head coach salaries. Overall, the differential in head coach salaries compared to athletic participation by sex favored men's head coaches slightly and represented a total of only \$6,839.60.

In addition, among the 6 men's teams and 6 women's teams (indoor track and field, outdoor track and field, cross country, swimming, golf, and tennis) that shared one head coach, the head coach received one salary for coaching both teams. For all other similar men's and women's teams (baseball/softball, basketball, soccer and volleyball), the men's head coach was paid more than the corresponding women's team head coach. The University paid a total of \$556,492 to these head coaches, with \$312,422, or 56.1% allocated to men's teams, while men composed 99/177, or 55.9%, of the male and female athletes, and \$244,070, or 43.9%, allocated to women's teams, while women were 78/177, or 44.1%, of these athletes. The .02 differential in head coach salaries for baseball/softball, basketball, soccer and volleyball slightly favored men's head coaches, but represented a total of just \$1,342.97.

In 2015-16, the University offered 129 assistant coaching positions for all sports. Of the 59 assistant coaches assigned to women's teams, 28 (47.5%) were paid positions. The remaining 31 positions were filled by volunteer coaches. For the 70 assistant coaches for men's sports, 27 (39%) were paid positions. The remaining 43 were filled by volunteers. The University paid a total of \$333,497, of which, \$146,191 or 43.8% was allocated to women's team assistant coaches while women were 46.5% of the athletes, and \$187,306 or 56.2% was allocated to men's team assistant coaches, while men were 53.5% of the athletes. The 2.7% differential in salaries compared to athletic participation by sex favored men's team assistant coaches, and represented \$8,885.11.

The University provided all similar men's and women's teams with similar numbers of assistant coaches, except for the baseball and softball teams. Baseball was provided a paid assistant coach position for its 29 athletes, but softball was not provided a paid assistant coach position for its 21 athletes. This disparity affected 8.9% of female athletes. The women's softball team won-loss record was 20-30. Softball players stated that the team did not have a sufficient number of coaches. One softball player characterized the new coach as "a great hire," but stated that there were not enough coaches to work with the team on offense, defense and pitching.

Analysis and Conclusion – Coaching

As to the availability, assignment and compensation of coaches for men's and women's teams, the University expressed interest to resolve prior to the completion of OCR's investigation. As noted above, the University signed the Agreement, which when fully implemented, will result in the University's compliance with the requirements set forth in Title IX in regard to the University's provision of equal athletic opportunities to students of both sexes in the availability, assignment and compensation of coaches.

**6. Provision of Locker Rooms, Practice and Competitive Facilities –
34 C.F.R. § 106.41(c)(7)**

The Title IX regulation requires recipients to provide equal athletic opportunity for members of both sexes regarding the provision of locker rooms, practice and competitive facilities. In assessing this program component, OCR analyzes the quality and availability of facilities provided for practices and competitive events, the exclusivity of use of facilities provided for practices 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.

The University has several athletic practice and competitive facilities on campus: the John F. Kennedy Sports Center (men's and women's basketball, volleyball, and swimming), Lewis Stadium (men's and women's track and field and soccer), Oremus Courts (men's and women's tennis), the Cross Country course (men's and women's cross country), Brennan Field (baseball) and the Softball Stadium (softball). The men's and women's golf teams practice and play at Prairie Bluff Golf Course, a public golf course and practice facility located off campus. The men's and women's tennis teams also compete for part of their schedule at a public indoor tennis facility located off campus. Locker rooms for all men's and women's sports are located in the John F. Kennedy Sports Center.

OCR examined the quality and availability of facilities provided for practices and competitive events, the exclusivity of use of facilities provided for practices 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. Overall, OCR learned that the courts and fields provided by the University were identical for all men's and women's sports except for those provided to baseball and softball. Thus, the practice and competitive facilities provided to the University's men's and women's teams, except baseball and softball, are similar for male and female athletes in terms of quality, availability, exclusivity, maintenance and preparation.

With respect to the baseball and softball facilities, OCR observed that they were substandard. The baseball stadium included a field that was noticeably tilted, had one of its two sets of bleachers in poor condition, and had poor quality lighting, affecting 10.7% of the male athletes. The softball field appeared however, to be in significantly worse condition as the bullpens faced the wrong direction, the field needed more spectator seating, has no concessions, and, significantly, it has no lights. This affected 8.9% of the female athletes.

OCR also observed overall, that neither men's nor women's teams were provided sufficient locker rooms near their practice and competitive facilities. OCR did not, however, find the lack of locker room space to be based upon sex of the athletes, because other than for men's and women's basketball, men's and women's volleyball, men's and women's swimming and men's and women's soccer, no men's or women's teams have meaningful access to locker rooms.

Analysis and Conclusion – Locker Rooms, Practice and Competitive Facilities

As to the provision of locker rooms, practice and competitive facilities for men's and women's teams, the University expressed an interest to resolve prior to the completion of OCR's investigation. As noted above, the University signed the Agreement, which when fully implemented, will result in the University's compliance with the requirements set forth in Title IX in regard to the University's provision of equal athletic opportunities to students of both sexes in the locker rooms, practice and competitive facilities.

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

In determining compliance with the provision of medical and training facilities and services component, OCR considers the following factors: (a) availability of medical personnel and assistance; (b) health, accident and injury insurance coverage; (c) availability and quality of training facilities; (d) availability and quality of weight and conditioning facilities; and (e) availability and qualifications of athletic trainers.

The University makes available to its student athletes, through the Loyola University Medical Center Division of Sports Medicine (LUSM), two qualified physicians who specialize in sports medicine. According to the AD, the University arranges for its physicians to perform physical examinations on each athlete prior to the first practice day for his or her sport. All coaches surveyed identified the physician who was assigned to their respective teams, and male and female athletes, as well as coaches, confirmed that athletes have had access to a physician upon appointment if they become ill or suffer an injury. According to coach surveys, one physician is on campus every day to meet with athletes. A medical appointment can also be made through the training staff.

Further, over 60% of men's team coaches and over 80% of women's team coaches reported to OCR that they chose to have a physician attend their home contests. No coaches reported that they could not have a physician at their contests if they so choose and no coaches stated that they had a University physician at their away¹⁷ contests. For practices, men's basketball, and men's and women's swimming, track and field, and cross country, reported that they had a physician at their practices "frequently." This represented 60.1% of male athletes and 58.9% of the female athletes.

In addition to physicians, the University has three qualified professional trainers on staff. Training services for intercollegiate athletes included taping, stretching and icing services. Additionally, trainers provided basic first aid and water and/or energy drinks for practices and games. According to the University, each of the three trainers is assigned to a team but all three trainers are available for any team for practices or home events. OCR observed trainers delivering water to softball and baseball practices. All coaches surveyed were able to confirm the name of the trainer assigned to their respective teams.

¹⁷ For conference away contests in men's and women's basketball, men's and women's volleyball, and men's and women's soccer, the home team provides a physician.

For away competitive events, the University provided professional trainers to five women's teams and five men's teams. Men's volleyball, basketball, tennis, baseball and soccer had assigned trainers at away competitive events, providing a benefit to 40.8% of male athletes. Women's basketball, softball, volleyball, soccer and tennis, also had assigned professional trainers at away competitive events. This provided a benefit to 36.4% of female athletes.

Additionally, because the University offers a Bachelor of Arts Degree in Athletic Training, the University makes available to work with University athletes student trainers who are in the later stages of the degree program. These students work under the supervision of program instructors and the University's professional trainers. Student trainers were specifically assigned to men's volleyball, women's basketball, women's soccer, and softball.

According to the University, male and female intercollegiate athletes are required to have primary health insurance coverage before they can compete for the University. For those students not already covered by another policy, the University offers an insurance plan through the 1st Agency Insurance Company. All male and female athletes without other insurance coverage are required to purchase this plan and OCR observed that the premiums for the insurance were the same for males and females.

With respect to the availability and quality of weight and conditioning facilities, OCR noted that the University has weight room and fitness rooms for its athletes located on the second floor of the JFK. The weight room contains free weights as well as various lifting machines, benches, chin up bars, and plyometric boxes. Directly south of the weight room are two fitness rooms, which contain the University's cardio equipment, including upright (4) and recumbent bicycles (2), treadmills (10), elliptical machines (12), and steppers (2). Most male and female athletes rated the facilities between excellent and average but indicated that rooms are too small and the rooms are always crowded.

According to the University, it does not pay separately for strength and conditioning services for athletes. According to the AD, coaches develop strength programs for their respective teams. Teams may also hire outside strength and conditioning coaches using their own budget allotment. According to student surveys, coaches develop and supervise their teams' workouts. OCR found no information to indicate that men's or women's teams are treated differently on the basis of sex with respect to strength and training services.

The training room is located on the first floor of the JFK. OCR observed that it is clean and well lit, with a small office for the athletic trainers and the student trainers. There are four training tables, as well as 8 other training tables in a room adjacent to the main training room. There are also scales, ice baths, a whirlpool, and cabinets for tape and other needed training supplies. All coaches stated that generally that the room was too small for all the number of athletes who need to use it at one time, but OCR found no information to indicate that men's or women's teams were treated differently on the basis of sex with respect to access to training facilities.

Analysis and Conclusion - Medical and Training Facilities and Services:

OCR examined the availability to male and female athletes of medical personnel and assistance, health, accident and injury insurance coverage for athletic participants, and weight and conditioning facilities. OCR also examined the availability and qualifications of athletic trainers and the quality and availability of training facilities. OCR observed no significant disparities on the basis of sex in the provision of medical and training services. Based on OCR's analysis, there is insufficient evidence to conclude that the University has failed to provide equivalent benefits, treatment, services and opportunities to male and female athletes with respect to the provision of medical and training facilities and services, as required by 34 C.F.R. § 106.41(c)(8).

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

The Title IX regulation requires recipients to provide equal athletic opportunity for members of both sexes regarding the provision of housing and dining facilities and services. In determining compliance regarding this program component, OCR addressed two factors: the housing provided, and special services provided as part of the housing arrangements (e.g., laundry facilities, parking spaces, maid service).

Like all other students, freshman athletes are required to live on campus. However, there are no special dorms, apartments, and/or dining facilities for athletes at any level. The University's office of Residence Life works with athletes to make sure they obtain proper housing and meal plans. After freshman year, student athletes are allowed to move off campus. Athletes and coaches confirmed that they are not provided special housing or any other special services, like laundry facilities, parking spaces, and/or maid service.

Further, there are no special dining arrangements for athletes. Athletes purchase their own meal plans based on how many meals the athlete intends to eat on campus. Other than food while traveling for competitive events, the University does not provide food for the athletes. According to coaches and athletes surveyed, there are three meal plans that students can select. There are not special rates or recommended meal plans for male or female athletes. Several coaches (representing both men's and women's teams) and male and female athletes asserted that the food should be healthier and have more nutritious and substantial calories for an athletes' activity levels.

Analysis and Conclusion – Housing and Dining Facilities and Services

OCR observed no disparities on the basis of sex in the provision of housing and dining services. Based on OCR's analysis, there is insufficient evidence to conclude that the University has failed to provide equivalent benefits, treatment, services and opportunities to male and female athletes with respect to the provision of housing and dining services, as required by 34 C.F.R. § 106.41(c)(9).

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.

According to the University, the Director of Athletics Communications and Assistant Director of Athletics Communications are charged with oversight of the publicity efforts for the Athletics Department. The Directors send athletics publicity information to media outlets in nearby metropolitan areas such as Chicago and Joliet. With the aid of student workers, the Athletics Communications Director and Assistant Director gather and disseminate all information regarding the sports programs at the University. The Director and Assistant Director split the responsibility of being the primary media contact for sports at the University.

According to the Athletics Communications Director, someone from the Athletics Communications office attends all home games for all sports. The Communications staff typically only attend away events if they are conference or NCAA tournaments.

As part of their assignments, the Athletics Communications staff draft press releases for all of the men's and women's sports programs. The press releases usually include scores and highlights and are issued before and/or after each game or event. Press releases are also disseminated at the beginning of each season, or when announcements are made regarding achievements of particular athletes. OCR observed that the Athletics Communications staff does this for all men's and women's sports programs, and OCR observed that they are of comparable quality. Press releases are posted on the school's website and disseminated to local media outlets. The Communications Office also prepares team statistics for posting on the website and to disseminate to local media outlets.

OCR reviewed the school's website (at various times during the school year) and found that both men's and women's sports programs receive comparable coverage. The University has a specific website link to athletics, <http://www.lewisflyers.com>, where anyone can view team rosters, information about coaches, schedules, updates, news and features for any particular sport. The Director and Assistant Director are responsible for the postings of their assigned sports and both are assigned to various men's and women's sports.

The University athletics programs also utilize radio and the internet. Each men's and women's basketball home game and select men's and women's basketball road games are covered by a Joliet based commercial radio station, WJOL. There is a campus radio station WLRA, which has the capacity to run radio broadcasts for baseball, softball and soccer, and according to one Director, it provides coverage when staff are available. According to the Directors, the department reports results to media outlets after a game or event, although they did not control whether the results were published.

OCR learned that publicity materials are provided by the Athletics Communications office for both men's and women's teams in a variety of media, including online press/media guides, game

schedules and programs and posters. For men's and women's programs, they are of comparable quality and quantity. For example, each team gets 50 mini posters for publicity and may purchase more out of the team's budget. All sports, with the exception of men's and women's golf, are provided with a program or roster for all home events. The Athletics Communications office provides a photographer to take head shots of athletes on every team. The photographer also attends two games/events for each team and those photos are used in connection with articles and press releases. OCR noted that billboard advertisements, which featured men's and women's teams, were placed by the University in the Chicago suburban area.

In addition, the University also has used social media proactively. The Athletic Communications office manages official Facebook pages, Twitter feeds and Instagram accounts for each team. It has a YouTube channel, which has not been updated in two months. All websites for men's and women's sports had similar layouts and contained similar information, such as pictures of the players, individual and team statistics, feature articles, press releases, and schedules. Beginning with the 2015-16 season, the University developed a smartphone application that allows fans to follow all University sports teams, receive streaming video coverage, and link to each team's social media presence. OCR found no substantial differences between men's and women's teams with regard to their online media, social media, or printed publications.

In surveys, some athletes expressed disappointment with the number of spectators at their competitions, and a number of them attributed this to the lack of publicity services. However, these concerns were expressed by both male and female athletes and appeared to be more related to the sport than to the sex of the athlete. No female athletes or coaches asserted to OCR that men's and women's teams were not treated equitably in the provision of publicity.

Analysis and Conclusion – Publicity:

OCR examined the availability and quality of sports information personnel, the services they provided, other publicity resources, such as social media, and the quality and quantity of publications and other promotional devices featuring men's and women's programs. OCR observed no significant differences regarding the quality of publications or other promotional devices the University provided to male or female athletes. As such, the benefits provided regarding publicity were equivalent or equivalent in effect for the men's and women's teams and did not result in any denial of equal athletic opportunity. Based on the foregoing, OCR determined that there is insufficient evidence to conclude that the University has failed to provide equal athletic opportunities to students of both sexes with respect to the provision of publicity, as required by 34 C.F.R. § 106.41(c)(10).

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

In assessing compliance regarding the provision of support services, OCR considered, among other factors, the equivalence for men's and women's teams in the amount of administrative, secretarial, and clerical assistance received, and the availability of office space, equipment and supplies, and other support services.

The AD is the head of the athletic program, and there are two Associate Athletic Directors. They are supported by one full-time administrative staff member. According to the University, clerical support is available to help all department staff with clerical matters.

According to information provided to OCR, 19 coaches' offices are located on two floors in the JFK, adjacent to the NCA. The offices are roughly the same size. Every head coach has a private office and the remaining offices are shared among the assistant coaches for similar teams. The office suite also has a copy (printer and copier) and supply room, a break room, and a room for press conferences that doubles as classroom for certain sports related courses. Each coach's office has a phone, a computer, a desk and chairs.

In surveys, the coaches of men's and women's teams indicated that they have equal access to necessary equipment and they made no complaints regarding the availability of office space or equipment. Coaches for both men's and women's teams indicated that they and their assistants coaches perform most of the clerical work necessary in support of their teams, with the support of the Athletic Department's administrative staff upon request. None of the coaches or athletes surveyed by OCR indicated that their sport failed to receive sufficient support services or that they were required to provide administrative support services, and OCR noted no differences among men's and women's teams in the provision of support services.

Analysis and Conclusion – Provision of Support Services

OCR examined the equivalence for men's and women's teams in the amount of administrative, secretarial, and clerical assistance received, and the availability of office space, equipment and supplies, and other support services. Coaches of all men's and women's teams perform various clerical duties in support of their athletic teams. OCR did not identify any differences between men's and women's teams in the amount of administrative, secretarial, or clerical assistance received, or in the availability of office space, equipment and supplies, or other support services.

Based on the foregoing, there is insufficient evidence to conclude that the University has failed to provide equivalent benefits, treatment, services and opportunities to female athletes with respect to the provision of support services, as required by 34 C.F.R. § 106.41(c).

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

In assessing compliance in this area, OCR considers 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.

With respect to opportunities to recruit, all the coaches for men's and women's teams agree that recruiting is an integral part of their jobs. Although several coaches state that they recruit athletes nationally and some internationally, most coaches largely recruit within the Chicago area and Midwest. The coaches of all men's and women's teams agree that most of their recruiting is done

proactively through the phone, by text and through emails, with some trips to watch athletes play, and visits from athletes to campus. In addition to proactive recruiting by coaches, the Athletic Department's website includes information for prospective student athletes to contact the University. Each coach also has an email address and phone number on the website.

In 2015-16, the University budgeted \$60,600 for all recruiting, with \$30,100, or 50.3%, allocated to men's teams (men composed 53.5% of athletes) and \$30,500, or 49.7%, to the women's teams (women composed 46.5% of the athletes). The differential in recruiting budgets compared to athletic participation by sex slightly favored women, who are the underrepresented sex.

Similar teams such as baseball and softball, men's and women's basketball, men's and women's swimming, and men's and women's track and field, received identical recruiting budgets for the similar men's and women's teams. Three women's sports, cross country, soccer and golf received higher recruiting budgets than their male counterparts. The recruiting budgets of the remaining two sports, tennis and volleyball, favored men. However, as noted, the same individual is the assigned coach for each of 6 men's and women's teams (cross country, track and field, golf and tennis) and OCR's review of the records provided by the University showed that the recruiting trips for these teams often included recruiting both male and female athletes. Coach surveys indicated that men's and women's teams had sufficient funds to recruit athletes, although several expressed a desire to have larger recruiting budgets.

OCR reviewed the information provided by the University as well as the surveys of University coaches and determined that the coaches of men's and women's teams received comparable numbers of recruiting trips. The majority of athletes are recruited from the same regional area (Chicagoland and the Midwest). In addition to the regional area, the University also recruits from the East and West coasts for men's and women's volleyball and internationally for men's and women's tennis. The men's and women's team coaches reported in surveys that in addition to travel, they use the same or similar recruiting methods: email, telephone, text, Internet, videos, etc.

As to the treatment of prospective athletes, in accordance with the University's policies regarding recruitment of student athletes and as confirmed by coaches, all recruiting must be done in accordance with NCAA recruiting regulations. In surveys, the men's and women's coaches acknowledge that prospective athletes have official and non-official visits to campus. From student and coach surveys, it appears that a roughly equal number of male and female athletes have visited the campus. Surveys of athletes confirmed that the University sponsored some recruiting visits for male and female recruits, who stated that the University provides benefits such as meals, transportation from the airport, lodging in the dorms or local hotel, and tickets to the team's athletic event.

Analysis and Conclusion – Recruiting

OCR assessed 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; 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 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.

OCR determined that coaches serving men's and women's teams recruit proactively, by contacting students through various means and by visiting athletes and having athletes visit the campus. Coaches serving men's and women's teams also recruit reactively to student inquiries sent to the contact information each coach posts on the University website. Coaches serving men's and women's teams appear to be provided substantially equal opportunities to recruit. While financial and other resources available for recruitment in both men's and women's athletic programs are limited, they appear to be equivalently adequate to meet the specific needs of each program, and OCR found no indication that the benefits, opportunities, and treatment afforded to prospective male and female student athletes has a limiting effect upon the recruitment, on the basis of sex.

Based on the foregoing, there is insufficient evidence to conclude that the University has failed to provide equivalent benefits, treatment, services and opportunities to male and female athletes with respect to the provision of recruiting opportunities, as required by 34 C.F.R. § 106.41(c).

Overall Conclusion

Given the information obtained in OCR's investigation, OCR determined that there is insufficient evidence of violation with respect to 7 component areas pertaining to the provision of equipment and supplies, the opportunity to receive academic tutoring and assignment and compensation of tutors, medical and training facilities and services, housing and dining facilities and services, publicity, support services, and recruitment of student-athletes.

However, OCR identified noncompliance in the accommodation of athletic interests and abilities due to identified interest, ability and available competition in women's bowling and likely interest, ability and available competition in women's lacrosse, as well as in the provision of athletic financial assistance. Prior to OCR's reaching an overall compliance determination with respect the remaining 4 component areas, the University requested to resolve the complaint by means of a resolution agreement.

Based on the information obtained during OCR's investigation, OCR determined that it is appropriate at this time to resolve the complaint with a resolution agreement that addresses the 2 areas of noncompliance identified by OCR and deficiencies identified by OCR in 4 component areas in the University's intercollegiate athletics program, to wit: the scheduling of games and practice time as it pertains to the opportunity for women to compete in prime time; the provision of travel and per diem allowances as they pertain to housing furnished to women athletes during travel; the provision of coaching, particularly for the women's softball team; and the provision of practice and competitive facilities due to the lack of lights at the softball field, as well as the location of the softball bullpens, and the provision of concessions and sufficient spectator seating at the softball field.

Accordingly, on April 27, 2017, the University submitted the enclosed Agreement that addresses the six component areas identified above. Pursuant to the Agreement, the University will take specific actions to ensure that it provides equal athletic opportunities for students of both sexes. OCR will monitor implementation of the Agreement.

Specifically, the University will provide equal opportunity for male and female students to participate in intercollegiate athletics by adding women's intercollegiate bowling and women's intercollegiate lacrosse teams to begin competition effective the 2018-19 academic year. Meanwhile, during the 2017-18 academic year, the University will publish on its web page its procedure for students to use to request the addition of intercollegiate sports, as well as the factors the University will assess in responding to such requests. The University will also publicize the addition of women's bowling and women's lacrosse, hire coaches for each team, schedule competitions for 2018-19, and otherwise provide the teams, in a manner comparable to other intercollegiate teams, with sufficient resources to cover expenses incurred in the addition of the bowling and lacrosse programs.

By November 30, 2017, and periodically thereafter so long as there is an underrepresented gender in its athletics program, the University will conduct a detailed, objective assessment to determine whether the athletic interests and abilities of the underrepresented gender in the athletics program are fully and effectively accommodated. The assessment will be based on multiple indicators of interest and multiple indicators of ability, including but not limited to results of recent surveys of students and admitted students or other information collected from students and admitted students using a method that is designed to fully and accurately assess unmet athletic interests and abilities in intercollegiate sports among women; identification of sports for women that are not currently offered by the University but that are offered by schools that compete within the athletic conference in which the University competes and by schools that are within the University's normal competitive regions; requests to add a particular sport or to elevate an existing club or intramural sport to intercollegiate sport status; assessments made by University coaches or staff during tryouts or observations of students participating in club or intramural competition, and other information reflecting the ability of female students and admitted students to compete in a particular sport, and prior participation in that sport or a similar sport at the high school level or intramural or club level. Where interest and ability in an intercollegiate sport not currently offered by the University is identified, the assessment will also consider whether there is a reasonable expectation of intercollegiate competition in the University's normal competitive regions in that sport. Based on the periodic assessments, the University will determine whether there are a sufficient number of female students and admitted students at the University with the interest and ability to support the addition of a sport or sports not currently offered by the University as intercollegiate sports and sufficient competition in those sports within the University's normal competitive region. Based upon its initial assessment, the University will by March 1, 2018, submit to OCR for review and approval its detailed plan with timeframes to accommodate effectively the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity in its intercollegiate athletics program by the 2019-20 academic year.

If the University adds a sport or sports, it will document to OCR prior during 2018-19, its actions to hire a coaching staff, recruit student athletes and provide sufficient resources to the coaching

staff to ensure that each sport begins competition no later than the 2019-20 academic year, consistent with the above determination, unless actions taken by the University are otherwise sufficient to demonstrate substantial proportionality, by sex.

The University will provide OCR with regular reports on the status of its implementation of the Agreement, including its plan to accommodate effectively the athletic interests and abilities of members of both sexes, as well as the results of its periodic assessments of unmet interests and abilities.

OCR has made clear to the University that OCR does not require or encourage the elimination of any University intercollegiate athletic teams and that it seeks action from the University that does not involve the elimination of athletic opportunities, because nothing in Title IX or the Three-Part Test requires an institution to cut teams or reduce opportunities for students who are participating in intercollegiate athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students.

In addition, the University will provide reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics, consistent with the requirements of Title IX, the Title IX implementing regulation at 34 C.F.R. § 106.37(c), and applicable OCR policies by no later than the beginning of the 2018-2019 academic year. The University understands that nothing in this Agreement requires the University to cut the amounts of athletic scholarships and/or grants-in-aid it offers to either sex and that any such cuts are discouraged.

The University also agreed that by 2018-19, it will provide equal athletic opportunities for members of both sexes in the scheduling of games at “prime time.” For purposes of this Agreement “prime time” for athletic competitions is typically defined as evenings that precede days without classroom instruction, usually Friday evenings and Saturday evenings. The University will demonstrate that its women’s athletic teams are provided with comparable opportunities as provided to the men’s intercollegiate athletic teams in the time of day competitive events are scheduled. In particular, the University will provide women’s basketball, soccer and softball teams comparable opportunities as men’s basketball, soccer and baseball to compete in “prime time.”

Further, the University will by the 2017-18 school year provide equal athletic opportunities to males and females in the provision of travel and per diem allowances, particularly with respect to housing furnished during travel. The University will, by June 15, 2017, develop and provide to OCR its plan to provide equal opportunities to males and females when teams are in travel status such that its women’s athletic teams, when they stay in hotels during travel, are provided with comparable opportunities as provided to the men’s intercollegiate athletic teams to stay 2 athletes to a room. In assessing compliance with the University’s provision of travel and per diem, OCR will also compare the modes of transportation, housing furnished during travel, length of stay before and after competitive events, per diem allowances, and dining arrangements provided to the University’s male and female athletes when on travel status to determine whether they are equivalent. Identical benefits, opportunities, or treatment are not required as long as the effects of any differences are negligible. If a comparison of the benefits, opportunities and treatment afforded to males and females in the identified program components indicates that benefits,

opportunities, or treatment are not equivalent, the University could still be in compliance with Title IX if the differences are shown to be the result of nondiscriminatory factors, such as the unique aspects of particular sports or athletic activities.

The University further agreed that by 2017-18, it will provide equal athletic opportunity for members of both sexes in the opportunity to receive coaching, particularly with respect to the availability of coaches for women's softball. To that end, the University will by November 30, 2017, hire additional full-time or part-time coaching support for the women's softball team. By June 15, 2018, the University will conduct an assessment of the availability of its full-time and part-time coaches for all men's and women's teams. Based on the assessment, the University will develop and submit to OCR for approval a plan to provide equal opportunities to males and females in the assignment of coaches to intercollegiate teams by no later than the 2018-19 year.

Finally, the University will by 2018-19, provide equal athletic opportunity for members of both sexes in the provision of practice and competitive facilities, with respect to the women's softball competitive facility. The University will by June 15, 2017, conduct an assessment of the quality and availability of the softball competitive facility, specifically determining whether the bullpens face the correct direction, and there is sufficient spectator seating, concessions and field lighting. By November 30, 2017, the University will submit to OCR for its approval an assessment of the quality and availability of the softball competitive facility, along with its plan if any, to make changes to the softball field consistent with the outcome of its assessment, including to the bullpens, concessions, seating, and field lighting. The University plan will include the dates by which it will add concessions, seating and make changes, if any to the bullpen by no later than March 1, 2018. The University will add lighting to the softball field by no later than 2018-19, or at a later date mutually agreed upon with OCR, consistent with the University's implementation of its Master Plan for the development of athletic facilities.

* * *

OCR appreciates your continued cooperation throughout the course of this investigation. Please be advised that 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, then OCR will take appropriate action to ensure the University's compliance with Title IX. Accordingly, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. However, before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR will provide the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of this complaint and it should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR complaint.

President David J. Livingston

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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.

Finally, it is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a complaint investigation, or participated in actions to secure protected rights.

As always, if you or your staff have any questions regarding this letter or during the monitoring of the University's implementation of the Agreement, please contact OCR at (312) 730-1560 or email Miguel Figueras, Regional Attorney, at miguel.figueras@ed.gov, or Ann Cook-Graver, Team Leader, at ann.cook-graver@ed.gov.

Sincerely,

Adele Rapport
Regional Director

Enclosure

cc: Maureen A. Murphy, Attorney