



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

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

September 27, 2018

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

Dr. Eric Kaler  
President  
University of Minnesota–Twin Cities  
202 Morrill Hall  
100 Church Street S.E.  
Minneapolis, MN 55455

RE: OCR # 05-15-2038  
University of Minnesota – Twin Cities

Dear Dr. Kaler:

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), against the University of Minnesota Twin-Cities (University) alleging discrimination on the basis of sex.

The complaint alleged that the University discriminates against women in the following areas of its athletic program:

1. Accommodation of women's athletic interests and abilities,
2. Distribution of athletic financial aid,
3. Provision of equipment and supplies,
4. Scheduling of competitions and practices,
5. Provision of locker rooms, practice and competitive facilities,
6. Provision of medical and training facilities,
7. Provision of support services, and
8. Distribution of recruiting resources.

OCR investigated this complaint under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 – 1688, 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 over this complaint.

Consistent with the Title IX implementing regulation and OCR's Intercollegiate Athletic Policy Interpretation (Policy Interpretation), in addition to the above eight areas, OCR investigated whether the University provides equal athletic opportunities for members of both sexes in the following areas:<sup>1</sup>

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<sup>1</sup> The Policy Interpretation be found at: <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>

9. Provision of travel and per diem allowances,
10. Opportunity to receive academic tutoring and compensation of tutors,
11. Opportunity to receive coaching and compensation of coaches,
12. Provision of housing and dining facilities and services, and
13. Provision of publicity services.

During the investigation, OCR obtained information from the Complainant and the University; interviewed coaches, athletic administrators and athletes; obtained and reviewed questionnaires from athletes and coaches; and inspected the University's athletic facilities, equipment and supplies.

Based on its investigation, OCR found insufficient evidence of a violation of Title IX regarding the University's accommodation of women's athletic interests and abilities; distribution of athletic financial aid; provision of equipment and supplies; scheduling of competitions and practices; provision of support services; distribution of recruiting resources; provision of travel and per diem allowances; opportunity to receive academic tutoring and compensation of tutors; opportunity to receive coaching and compensation of coaches; provision of housing and dining facilities and services; and provision of publicity services. As to the two remaining component areas i.e., the provision of locker rooms, practice and competitive facilities and the provision of medical and training facilities, OCR has not made a finding under Title IX. Instead, the University submitted the enclosed Resolution Agreement (Agreement) on September 17, 2018, in which it pledges to assess its compliance in the issue areas noted and, working collaboratively with OCR, to take proactive measures to resolve any deficiencies identified as a result of its assessments. A summary of OCR's findings and observations follows.<sup>2</sup>

## **Background**

### **The University's Athletic Program**

The University operates a National Collegiate Athletic Association (NCAA) Division I athletic program. The University's athletic program offers 25 women's and men's sports:

<b>Men's Teams</b>	<b>Women's Teams</b>
baseball	softball
basketball	basketball
cross country	cross country
football	
golf	golf
gymnastics	gymnastics
ice hockey	ice hockey
indoor track & field (i)	indoor track & field (i)
outdoor track & field (o)	outdoor track & field (o)

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<sup>2</sup> OCR's findings are based on the finalized University Athletic Department data for the 2016-17 academic year.

**Men's and Women's Teams (continued)**

<b>Men's Teams</b>	<b>Women's Teams</b>
	rowing
	soccer
swimming & diving	swimming & diving
tennis	tennis
wrestling	volleyball

All teams compete in the Big Ten Athletic Conference, with the exception of women's ice hockey, which competes in the Western Collegiate Hockey Association.<sup>3</sup>

According to University, after the completion of an athletic-facility needs assessment in 2013, the University committed to building an "Athletes Village" to meet the current and future needs of the athletic program. Construction of the Athletes Village began in spring 2015.

The Athletes Village called for portions of the complex to be built on land occupied by the University's outdoor track facility. At the time, the outdoor track facility was widely agreed to be in poor condition as compared to its Big Ten peers. Due to the poor condition of the outdoor track facility, it was not approved to host competitive events for the men's and women's outdoor track teams.

In summer 2015, the University reached agreements with Hamline University (4.4 miles from the University) and Concordia University (4.0 miles from the University) to allow the University's male and female track athletes to train at the track and field facilities located at Hamline and Concordia beginning spring 2016. The outdoor track was demolished in spring 2016.

In January 2018, the newly-constructed sections of the Athletes Village were opened to students and staff. The new facilities include the Center for Excellence, the Football Development Center and the Basketball Development Center. Construction on the outdoor track and field facility began in July 2017, with the facility opening to athletes and the public on September 17, 2018.

**Applicable Legal Standards**

The Title IX regulation, at 34 C.F.R. § 106.37(c), states, "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 interscholastic or intercollegiate athletics."

The Title IX regulation, at 34 C.F.R. § 106.41(a), states, "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis."

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<sup>3</sup> The Big Ten does not offer Women's Hockey as a conference-sponsored sport.













**Equipment and Supplies Budget 2016-17 (continued)**

<b>Men</b>	<b>Sport</b>	<b>Women</b>	<b>Sport</b>	<b>Sport</b>	<b>Women</b>	<b>Men</b>
<b>Budget</b>	<b># Athletes</b>	<b>Per Athlete</b>		<b>Budget</b>	<b># Athletes</b>	<b>Per Athlete</b>
N/A			volleyball	\$197,583.00	18	\$10,976.83
\$74,323.00	43	\$1,728.44	wrestling	N/A		
<b>\$2,337,790.00</b>	<b>457</b>		<b>Total</b>	<b>\$1,362,072.00</b>	<b>466</b>	

Overall, the budget for the 2016 – 2017 academic year for equipment and supplies totaled \$3,699,862.00. Women, who were 50.5% of the athletic opportunities, received \$1,362,072.00 or 36.8% of the equipment and supplies budget for 13 sports, while men, 49.5% of the athletic opportunities, received \$2,337,790.00 or 63.2% of the equipment and supplies budget for 12 sports. On average, the 457 men received \$5,115.51 per athletic opportunity while the 466 women received \$2,922.90 per athletic opportunity.

The Athletics Department had a contract with Nike for the provision of all equipment and supplies. The AD managed the negotiation of the Nike contract. If a sport could not utilize Nike’s products, then the items were identified and a provision for non-Nike equipment and supplies was made in the sport’s proposed budget.<sup>8</sup>

*Quality*

Coaches and athletes on men’s and women’s teams overall assessed the quality of their equipment and supplies similarly. Athletes and coaches generally characterized their equipment and supplies as good to excellent. Teams generally received equipment and supplies of equal quality, with a few exceptions. The men’s golf team stated that one of the competition polo shirts they are provided is stiff, uncomfortable and subpar. The men’s golf team stated they doubted the polo shirt was made for golf competition. This affected 3.0% of all male athletes.

*Amount*

The men’s and women’s head coaches reported that each team is allocated a budget to spend on equipment and supplies. Generally, they reported that their budgets were adequate to purchase enough equipment and supplies. The women’s soccer team reported that they were not always issued the appropriately-sized gear and that it was difficult to find replacement sizes if an athlete was issued wrong-sized gear. This affected 5.8% of the female athletes. The women’s basketball players stated that their taller players have some difficulty obtaining shorts long enough for the players. The women’s basketball players stated that the men’s basketball team does not have trouble finding shorts long enough for its players in spite of the men’s team athletes, on average, being taller than the women’s

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<sup>8</sup> For example, the University’s hockey teams use non-Nike helmets, sticks and gloves; the baseball team uses non-Nike bats, and the tennis teams use non-Nike tennis racquets.

team athletes. The women's basketball team stated this problem affected four players on the team for the 2016-2017 academic year, which represented 0.9% of all female athletes. The men's gymnastics team (representing 4.4% of male athletes) stated they are responsible for purchasing their own gloves. The men's golf team (representing 3% of male athletes) stated they must provide their own golf putter or share the cost of purchasing a putter with the Athletics Department. Thus, 6.7% of female athletes and 7.4% of male athletes experienced some difficulty with the amount of equipment provided to their respective teams.

### *Suitability*

According to coaches and athletes, all teams received suitable equipment and supplies that met the applicable requirements of the governing/sanctioning body for their sports during the 2016-2017 academic year.

### *Maintenance and replacement*

The Athletics Department retains ownership of all equipment. The equipment managers have the primary responsibility for storage, maintenance, security, and inventory of uniforms and apparel. Coaches and equipment managers maintain the inventory for all other equipment.

The equipment managers issue athletic equipment and apparel for practices and games to all athletes. The rowing team told OCR their equipment manager may take as many as three days to replace broken or worn equipment/supplies/apparel, which the team believed demonstrated they were not a priority for their equipment manager. This affected 16.3 % of female athletes.

The University reported that equipment managers are responsible for care and laundering of competitive and practice gear for all sports. Men's and women's golf athletes, however, indicated that they do their own laundering; this affects 3 % of male athletes and 1.5 % of female athletes. Additionally, the rowing team, representing 16.3 % of female athletes, stated they did not believe their equipment manager used laundry detergent when washing their practice clothes and stated they are not clean when returned by the equipment manager. Student-athletes from other teams, including football and men's basketball (representing 27.6 % of male athletes), indicated that their practice uniforms often retain an odor and are stained, even after they have been laundered by the equipment managers.

Most athletes reported receiving new or slightly used uniforms and practice gear, and indicated that it is replaced if it is worn or damaged. There were no other concerns expressed regarding the maintenance and replacement of equipment and supplies.

Prior to and after the season, coaches consult with the equipment room and identify apparel and equipment targeted for replacement. Equipment managers and coaches may initiate orders and payment within the limits of the sport's approved budget.

*Availability of equipment and supplies*

OCR examined whether teams were provided with equivalent maintenance services (such as equipment storage) as well as equivalent replacement schedules. OCR also reviewed the locations each team uses to store its equipment. OCR found no significant disparities based on sex with respect to the availability of equipment and supplies based on (1) quality; (2) amount; (3) suitability; (4) maintenance and replacement; and (5) availability of equipment and supplies.

*Conclusion - Equipment and Supplies*

OCR's investigation revealed no differences in the suitability and availability of equipment and supplies, which the University provides to male and female athletes. Where female athletes noted disadvantages in the provision of equipment and supplies, a nearly equal number of male athletes expressed similar concerns.

As for the quality of the equipment and supplies provided to student-athletes, OCR notes that the University provided male golfers (3 % of male athletes) with stiff, poor quality polo shirts. Furthermore, 6.7 % of female athletes (basketball and soccer) and 7.4% of male athletes (gymnastics and golf) experienced some difficulty with the amount of equipment and supplies provided to their respective teams. As for the maintenance and replacement of equipment and supplies, male golfers (3 % of male athletes) had to wash their own uniforms and the male football and basketball players (27.6 % of male athletes) reported receiving inadequately laundered practice uniforms. At the same time, female rowing athletes reported two concerns: the slow and untimely replacement of broken or worn equipment/supplies/apparel and inadequately laundered practice uniforms. Giving equal weight to each concern, this represents 32.6 % of female athletes. Additionally, the female golfers (1.5 % of female athletes) indicated they had to wash their own uniforms. Accordingly, 34.1 % of all female athletes noted disadvantages to the maintenance and/or replacement of their uniforms, while 30.6 % of all male athletes expressed similar concerns.

In total, OCR found that 41 % of male athletes and 40.8 % of female athletes experienced disadvantages in regard to the provision of equipment and supplies. After carefully evaluating the evidence, OCR has determined that the preponderance of the evidence is insufficient to conclude that the University has failed to provide equivalent opportunities to female athletes in this component area, as required by 34 C.F.R. § 106.41(c)(2).

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

The Complainant speculated that the demolition of the outdoor track facility would negatively affect the ability of the men's and women's track and field teams to practice.

The Policy Interpretation lists the following five factors to be assessed in determining whether a recipient provides equal opportunities in the area of scheduling of games and practice times: (1) number of competitive events per sport; (2) number and length of practice opportunities; (3) time of day competitive events are scheduled; (4) time of day practice opportunities are scheduled; and (5) opportunities to engage in available pre-season and post-season competition.

In assessing the University's compliance with respect to this component, OCR considered the information provided by the University regarding the 2016-17 academic year scheduling of games and practice times as well as information provided by surveys of coaches and student-athletes.

#### *Number of Competitive Events per Sport*

OCR considered the total number of competitive events provided for each intercollegiate athletics team as compared to the number of competitive events allowed under NCAA guidelines for each sport. OCR determined that all intercollegiate athletics teams competed in the maximum allowed competitions and/or events.

#### *Number and Length of Practice Opportunities*

The practice hours for each of the teams varied, with no team practicing on an identifiable schedule.

#### *Time of Day Competitive Events and Practice Opportunities Are Scheduled*

OCR examined the time of day of competitive events and practice opportunities for same/similar teams by sex. OCR took into account the preferred day and time, or prime time for competitive events, and considered the convenience for student-athletes and conduciveness to audience attendance.

The University maintains a Facility Scheduling Policy (Scheduling Policy) where team schedules must be approved by the sport administrator responsible for each sport. The Scheduling Policy notes that "football, men's and women's basketball and/or men's ice hockey can't be scheduled at the same time due to staffing issues and/or parking/traffic issues." The Scheduling Policy also states that "other sports can be scheduled on football Saturday with the understanding that there will be limited staff support and parking for the event." The sports administrator for each team sends its approved schedule to the Athletic Director for Facilities/Event Management for booking and conflict resolution. The schedule then goes to the Athletic Communications office for inputting into the All Sports Schedule.

#### *Competitive Events*

OCR determined that there was no disparity regarding the scheduling of competitions by sex.

The majority of both men's and women's teams competed in prime time for the respective sports. Athletes from the majority of sports reported their competitions are played in prime time. Three sports, men's and women's golf and wrestling, reported that their sports generally do not have a traditional prime time for competition. Surveyed athletes for all teams, with exception of men's golf, reported that their competitive schedule was convenient and did not conflict with class times, meals or other scheduled activities. Men's golf athletes (14 men representing 3.0% of male athletes) reported that competitions sometimes conflict with class times.

During the 2016-2017 academic year, both men's and women's gymnastics teams competed on the same day twice. On one date, the men competed early in the afternoon, while the women competed in the

early evening. On the second date, both teams competed at the same time. Both male and female gymnasts reported that they did not compete in prime time (Saturday evenings), in approximately three of their seven regular season dual meets. This affected 20 male athletes (4.4% of all male athletes) and 17 (3.6% of female athletes).

Men's and women's basketball teams played on the same day twice during the 2016-2017 academic year. In both instances, the men's team (15 men representing 3.3% of male athletes) played in the prime time evening timeslot, while the women's team (15 women representing 3.2% of female athletes) played earlier in the day.

### *Practice Opportunities*

All teams held regularly-scheduled, in-season practices, and most teams practiced on average three to four hours during a day, six days per week. The time of day teams practiced varied by team, with the majority of teams practicing early mornings or early afternoons. All athletes and coaches interviewed by OCR indicated that their teams have a sufficient number of practices during their competitive seasons. The women's rowing team reported that their Spring Semester practice times during the spring semester are often inconvenient, with one rowing athlete stating the 3:45 p.m. start time is "horribly inconvenient". Athletes from the men's and women's teams indicated that occasionally they were unable to enroll in a class because it was scheduled at the same time as the team's practice. Both male and female swimmers indicated that, although their classes sometimes conflicted with their practice times, they were allowed to join practice late or exit practice early to attend a class.

### *Opportunities to Engage in Available Pre-Season and Post-Season Competition*

The University reported that soccer, volleyball, women's cross country and football participated in preseason competitions during the 2016-2017 academic year. OCR confirmed with the University that no team was denied the opportunity to schedule NCAA-permitted preseason competition.

The University follows the NCAA playing and practice season rules for all sports and the availability of post-season competitions. All teams have the opportunity to compete in the championship in their primary conference. OCR confirmed that no eligible team was prevented from participating in any earned postseason opportunity.

### *Conclusion – Scheduling of Games and Practice Time*

OCR's investigation revealed that during the 2016-2017 academic year the University provided athletes on men's and women's teams equal opportunities with regard to the number of competitions in which they engaged, the number and length of their practices, and their opportunities to engage in pre-season and post-season competition during the 2016-2017 academic year.

OCR's review of all competitive schedules and the statements of student-athletes revealed that the following teams were adversely affected by the time their competitive events were scheduled: men's and women's gymnastics, men's golf, and women's basketball. Male gymnasts (20 men, 4.4% of male athletes) and female gymnasts (17 women and 3.6% of female athletes) indicated that they did not compete in prime time (Saturday evening) in three of their seven regular season meets. Male golfers (14

men comprising 3% of male athletes) reported that competitions sometimes conflicted with classes and female basketball players (15 women comprising 3.2% of female athletes) reported that on two occasions during the 2016-2017 academic year, they competed in mid-day while the men's team played in the evening. The information obtained by OCR shows that 34 (or 7.4 %) of male athletes and 32 (or 6.8%) of female athletes were affected adversely by their competitive schedules. Accordingly, OCR found a slight disadvantage to male athletes with regard to the scheduling of competitive events.

With respect to the scheduling of practices, some members of the women's rowing team reported that the 3:45 pm practice time during the spring semester is often inconvenient. On balance, athletes from both men's and women's teams indicated that occasionally they were unable to enroll in a class because it would meet at the time their team's practice was scheduled. Both men and women swimmers indicated that their practice times were established so that they could join or exit practice depending on when they had to go to class.

OCR's investigation revealed that the scheduling of practice time for many teams, regardless of whether they are men's or women's teams, sometimes conflicted with athletes' class schedules. Thus, men and women experienced similar disadvantages with regard to practice scheduling.

For these reasons, OCR determined that the evidence is insufficient to conclude that the University discriminates against female student-athletes with regard to the scheduling of games and practice time, as required by 34 C.F.R. § 106.41(c)(3).

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

The Policy Interpretation lists five factors to be assessed in determining whether a recipient provides equal opportunities in the area of travel and per diem allowance: (1) modes of transportation; (2) housing furnished during travel; (3) length of stay before and after competitive events; (4) per diem allowances; and (5) dining arrangements.

#### *University Policies and Procedures*

Through its Business Office Policy Manual, the University's Athletics Department gives direction to all sports teams in terms of budgeting team costs, which include in-state and out-of-state per diem, airfare and baggage cost per person, hotel room cost per night, and bus costs. Additionally, per diems are established by Athletics Department in alignment with University guidelines. The travel policy includes guidelines for charter flights; teams that rely on charter air must secure estimates for budgeting and approval purposes. Each team is responsible for booking its own travel arrangements, although Support Staff may assist as needed.

#### *Modes of transportation*

In the 2016-2017 academic year, all University athletic teams traveled nationally to away events. According to the University, there are four main modes of transportation to away games: passenger vans

and cars when the travel party contains 20 or fewer athletes; commercial buses for travel parties over 20; commercial airlines arranged by the University; and charter flights.<sup>9</sup>

With exception of teams that use charter flights for travel to their regular season competition, all teams traveling less than 450 miles are required to travel by bus/van/car. Additionally, with the exception of teams that use charter flights for regular season competitions, teams competing in away games within approximately 150 miles of Chicago (e.g. Champaign, IL) or Detroit (e.g. East Lansing), will fly into the applicable city and charter a bus for the remaining portion of the trip.

Football, volleyball, and men's and women's basketball, and men's and women's ice hockey used charter flights to many of their games, while other sports generally were not allowed to use charter flights absent extenuating circumstances. According to information provided by the University, men's teams used charter flights 32/100 times they flew to competitions, totaling 32.00 % of the flights, and women's teams utilized charter flights 28/108 or 25.93% of the times they flew. Overall, men's teams traveled by commercial or charter flights to 100/133 or 75.19% of the away competitions, and women's teams traveled by air to 108/141, or 76.60%, of their away competitions.

Men's teams drove to 25/133, or 18.80%, of the away competitions, while women's teams drove to 25/141 or 17.73% of their away competitions. For both men's and women's teams, the number of travelers determined the specific mode of ground transportation (car, van, or bus).

The University reported that on eight occasions during the 2016-2017 academic year, members of the men's and women's track and field teams were required to provide their own transportation to local away competitions. As such, men's teams were required to provide their own transportation to 8/133 or 6.02% of their away competitions, while the women's teams were required to provide their own transportation to 8/141 or 5.67% of their away competitions.

#### *Housing furnished during travel*

As for teams staying overnight in a hotel, men's teams stayed overnight for 117/133 (87.97%) trips, while women's teams stayed overnight for 130/141 trips (92.2%). Head coaches and athletes were satisfied with their housing while on travel and length of stay before and after away events. They reported the quality of the hotel ranged from good to very nice. All teams reported that two athletes stayed in each room.

#### *Length of stay before and after competitive events*

In regard to the length of hotel stays, head coaches reported that a hotel stay depended on the distance of travel, mode of travel, the time the event started, the length of the event, and when the event ended. None of the head coaches of men's or women's teams stated to OCR that they did not have adequate time to travel to, prepare for, and compete in away events. Although athletes preferred to arrive at an event the day before the competition, it was common for both male and female athletes to arrive the day of an away competition.

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<sup>9</sup> During the 2016-17 academic year, charter flights were used by the football team, volleyball team, baseball team, softball team, men's track and field team, women's track and field team, men's basketball team, women's basketball team, men's hockey team, and women's hockey team.

OCR reviewed the travel schedules, records of overnight stays, and competition schedules of all men's and women's teams. Based on the time of the event and distance traveled, men's and women's teams had similar numbers of day-of-event stays, evening-after stays, and late-night drives after events.

*Per diem allowances*

<b>Departure Day</b>		
<b>Time of Departure</b>	<b>Meal(s)</b>	<b>Amount</b>
Before 7:00 a.m.	Breakfast, Lunch & Dinner	\$40
Before 11:00 a.m.	Lunch & Dinner	\$30
Before 4:00 p.m.	Dinner	\$20
After 4:00 p.m.	No Per Diem	\$0

<b>Return Day</b>		
<b>Time of Departure</b>	<b>Meal(s)</b>	<b>Amount</b>
Before 9:00 a.m.	No Per Diem	\$0
After 9:00 a.m.	Breakfast	\$10
After 1:00 p.m.	Breakfast & Lunch	\$20
After 7:00 p.m.	Breakfast, Lunch & Dinner	\$40

All male and female sports are provided the same *per diem* allowance.

*Conclusion - Travel and Per Diem Allowance*

OCR considered the modes of transportation, housing and dining arrangements furnished during travel, length of stay before and after competitive events, and per diem allowances for the 2016-2017 academic year. The evidence suggested that there were no differences based on sex in types of housing accommodations or dining opportunities, or *per diem* payments.

Based on the foregoing, there is insufficient evidence to conclude that the University has failed to provide equivalent opportunities to women athletes in the provision of travel and per diem allowances, as required by 34 C.F.R. § 106.41(c)(4).

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

The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of tutoring: (1) the availability of tutoring; and (2) procedures and criteria for obtaining tutorial assistance. The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the assignment of tutors: (1) tutor qualifications; and (2) training, experience, and other qualifications. The Policy Interpretation also lists five factors to be assessed to determine whether a recipient provides equal opportunities in the compensation of tutors: (1) hourly rate of payment by nature of subjects tutored; (2) pupil loads per

tutoring season; (3) tutor qualifications; (4) experience; and (5) other terms and conditions of employment.

### *Availability, Procedures and Criteria for Obtaining Tutorial Assistance*

According to documentation provided by the University as supported by testimony from coaches and male and female athletes, the University monitors the academic progress of all student-athletes. Tutoring is available free of charge to all student-athletes. The University offers both individual-subject tutoring and mentor tutoring.<sup>10</sup> Both subject and mentor tutoring are offered to student-athletes free of charge. The University's McNamara Academic Center (MAC) is responsible for coordinator tutoring services for student-athletes. According to the University, MAC hires between 40 and 60 subject tutors and between 10 and 20 mentor tutors in any given semester.

Additionally, each intercollegiate team is assigned a MAC academic advisor (Advisor) to assist its student-athletes. Advisors provide the MAC Coordinators of Learning Services (Coordinators) schedules of student-athletes who need tutoring and also approve student-athletes who request tutors on their own. Student-athletes may also request tutoring services by contacting a Coordinator directly.

The Coordinators are responsible for tutor assignment, including the day(s) and time(s). All tutoring session schedule through MAC must occur at the MAC Learning Center.

### *Tutor qualifications*

#### **Mentor Tutors**

The University requires applicants for mentor tutoring position have: 1) at least two years of experience working with or tutoring students; 2) excellent communications skills, both written and oral; and 3) the ability to meet with students more than five hours per week, including evenings and weekends. Preferred qualification for the position include: 1) a bachelor's degree; 2) previous experience working as a teacher, GA, or TA; and 3) experience working with diverse groups of college student populations.

#### **Individual-Subject Tutors**

The University requires applicants for mentor tutoring position: 1) have advanced at least to junior in good academic standing; 2) possess an overall Cumulative GPA of 3.0; have taken and passed with an "A" or "B" any course for which the applicant wishes to be considered eligible to tutor; and be capable of working flexible hours. Preferred qualification for the position include: 1) a bachelor's degree and working in either a master's or PhD program; and 2) prior experience and training as a tutor or in education.

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<sup>10</sup> According to the University, "Mentor tutoring is provided for student-athletes who need additional help developing the study skills necessary for success at the university level. Mentor tutors provide guided, supervised study on an individualized basis. Mentor tutors are accomplished students who have knowledge of learning styles, strategies, techniques, tools, and resources important to success in college classes."

According to the University, it screens subject tutor applicants for content knowledge in two ways: 1) applicants are required to submit a resume and a copy of their unofficial transcripts; and 2) in some cases (e.g. upper-level courses) MAC asks for letters of recommendations from current or former professors.

### *Tutor Training*

The University provides a training program for new tutors before they begin tutoring. If the tutor begins before the start of a semester, she attends a New Tutor Orientation as a group. If the tutor is hired in the middle of a semester, she received New Tutor Orientation from a Coordinator before the start of their first full semester as a MAC tutor. The New Tutor Orientation consists of an overview of NCAA Regulations and MAC protocols. The orientation also provides information on ethical obligations in tutoring. All returning tutors must attend a Returning Tutor Training session before each semester which covers any updates and changes to NCAA Regulations and MAC protocols.

MAC tutors are invited to attend the University's Common Tutor Training (A collaborative seminar with other University tutoring centers) each Fall Semester, and MAC tutors can take participation online webinars provided by the College Reading and Learning Association.

Following each tutoring session, tutors document a summary of the session. Coordinators observe each tutor once a semester and perform mini-observations of sessions throughout the semester. Advisors observe sessions on a regular basis.

### *Hourly rate of payment by nature of subjects tutored*

Tutors are required to submit tutoring logs in order to receive payment for their services. For subject tutors the pay scale of each tutor was determined by the level of education the tutor had achieved (i.e. \$XX per hour for undergraduate tutors, and \$XX per hour for graduate tutors), while mentor tutors were paid a flat rate (\$XX per hour) regardless of education level. OCR found no evidence indicating sex was a consideration in the compensation paid to tutors or in tutor assignments.

### *Pupil loads per tutoring season*

According to the University, most tutoring is conducted one-on-one or in small groups, but MAC does offer "drop-in group tutoring" to all student-athletes for common first-year classes (e.g., math, sciences, and social sciences) during evening hours.

According to the University, students are matched with tutors on a first-come, first-served basis. Students are strongly encouraged by the University to submit their tutoring requests prior to the beginning of each semester for the best opportunities for matching.

In interviews with OCR, coaches and students confirmed that tutoring was available at no cost to student-athletes. Male and female students alike noted that the quality of the tutors, when available, was generally appropriate. Both male and female student-athletes and coaches explained that as athletes proceed in their studies beyond the general education curriculum, sometimes they have problems finding

appropriate academically-advanced tutors. Several male and female athletes in many sports reported difficulties obtaining tutors for high-level or major-specific classes.

The University provided OCR information indicating that on 37 occasions during the 2016-2017 academic year, the University was unable to find a subject tutor for student-athletes. This affected 20 male athletes (5.29% of all male athletes) and 17 female athletes (5.04% of all female student-athletes).

### Conclusion - Tutoring

Based on OCR's analysis and student statements, both male and female athletes had difficulty finding qualified tutors for high-level courses. OCR found no pattern, based on the sex of the athlete, of difficulty with securing knowledgeable tutors for high-level courses. OCR found no disparities on the basis of sex in the procedures and criteria that must be followed by athletes to obtain tutorial assistance, or the qualification of the tutors assigned to male and female athletes. Additionally, OCR found no disparities on the basis of sex concerning the compensation provided to the tutors of male and female athletes.

Although the evidence established a slight disadvantage to male athletes in their ability to secure subject tutors, the disadvantage was negligible (.25 % point disadvantage). As such, OCR has determined that the preponderance of the evidence is insufficient to conclude that the University has failed to provide equivalent opportunities to female athletes to receive tutoring, as required by 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)**

The Policy Interpretation lists three factors to be assessed in determining whether a recipient provides equal opportunities in the availability of coaching: (1) relative availability of full-time coaches; (2) relative availability of part-time and assistant coaches; and (3) relative availability of graduate assistants. The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the assignment of coaches: (1) training, experience, and other professional qualifications; and (2) professional standing. The Policy Interpretation lists seven factors to be assessed in determining whether a recipient provides equal opportunities in the compensation of coaches: (1) rate of compensation (per sport, per season); (2) duration of contracts; (3) conditions relating to contract renewal; (4) experience; (5) nature of coaching duties performed; (6) working conditions; and (7) other terms and conditions of employment.

#### *Relative availability of head coaches, assistant coaches and graduate assistants*

Coaches of men's and women's teams who were interviewed by OCR indicated that they perform similar duties. Among the duties most head coaches performed were: conducting practices and on-field coaching during games, administratively overseeing the program, supervising staff, player development, scouting, on-site and off-site recruiting, public relations, marketing and fundraising. For the 2016-17 academic year the coach-to-athlete ratios for male athletes was 1:10.63, while the ration for women's teams was 1:11.65.

The University, without exception, provides all sports the maximum number of coaches allowed by the NCAA. For the 2016 – 2017 academic year, all male and female athletes had a head coach and all sports, with the exception of men's and women's cross country, had at least one assistant coach; the lack of an assistant coach affected 18 male cross country runners (4.0% of male athletes), and 43 female cross country runners (9.2% of female athletes). The ratio of assistant coaches and graduate assistants was 1:13 for men's teams and 1:17 for women's teams.

For the 2016-17 academic year, the men's and women's swim and dive teams shared head and assistant coaches. The swim and dive teams shared one head coach and five assistant coaches. Therefore, the University has one head coach for 39 (or 8.5%) of its male athletes and one head coach for 38 (or 8.2%) of its female athletes.

No coaches asserted that they could not provide their athletes an adequate amount of coaching based on the number of athletes they were required to coach. However, female athletes on the cross country team indicated their head coach was too busy and that there were too many athletes for her to effectively coach the athletes. The ratio of coaches to athletes in cross country is 1:18 for the men's team and 1:43 for the women's team, which is the highest coach to athlete ratio of any sport.

Athletes on men's and women's track and field – indoor and outdoor – stated that without volunteer coaches, they would not receive sufficient coaching. Male track and field athletes account for 61 (13.3%) of all male athletes and female track and field athletes account for 85 (18%) of all female athletes.

The women's indoor and outdoor track teams have the second and third highest coach to athlete ratio of any sport at 1:29 and 1:28, respectively. However, while three of the women's teams have the highest coach to athlete ratios of any team, seven of the nine teams with the smallest coach to athlete ratios for any team are also women's teams. These women's teams include tennis, swim and dive, softball, basketball, volleyball, golf and gymnastics, all of which have a 1:6 coach to athlete ratio or better. Only two men's sports – tennis and basketball – have a 1:6 coach to athlete ratio or better. Overall, the ratio of coaches to athletes in the men's and women's programs is 1:11 and 1:12, respectively.

#### *Training, experience, and other professional qualifications*

For the 2016-2017 academic year, the men's teams had a total of 10 coaching positions with coaching experience ranging from 7 to 39 years, with an average of 21.2 years. The women's teams had 10 coaching positions with experience ranging from 5 to 31 years, with an average of 16.5 years. Information obtained in OCR's investigation is insufficient to indicate that the University routinely assigned coaches of less experience or qualifications to any particular sports team on the basis of the sex of the team members, and OCR found no indication that there was more turnover in coaching of teams for one or the other sex.

Most athletes indicated that they had no concerns about the quality of coaching provided their teams. However, the athletes on two teams – the men's golf and women's tennis – indicated that they had concerns about their coaches during the 2016 – 2017 academic year. The 2016 -2017 men's golf coach was alleged by team athletes to be verbally abusive to players. According to members of the women's

tennis team, the 2016 – 2017 women’s tennis coach did not run practices with sufficient intensity for the athletes to feel they were getting the most out of their practices. These issues affected 3.0% of male athletes and 2.4% of female athletes. Both the women’s tennis and men’s golf coaches were replaced at the conclusion of the 2016-17 academic year. The University hired new head coaches for both teams.

#### *Rate of compensation*

The Policy Interpretation states that compliance with respect to the compensation of coaches will be assessed by examining, among other factors, the equivalence for men’s and women’s coaches of: (a) rate of compensation (per sport, per season); (b) duration of contracts; (c) conditions related to contract renewal; (d) experience; (e) nature of coaching duties performed; (f) working conditions; and (g) other terms and conditions of employment.

The University does not have written policies or procedures for determining coaching salaries. Each coach’s contract has a base salary. Each contract also identifies other potential categories of income, which can include supplemental income, supplemental retirement contributions, incentive/performance bonuses and longevity/retention bonuses. All coaches have provisions in their contracts for some kind incentive/performance bonuses. There is no specific formula or rule for what additional categories of income a contract might include. In general, the University stated that it depends on whether a particular coach asked during contract negotiations to have part of his/her total compensation allocated to something other than base salary.

The University stated that additional categories of compensation are more common in the high dollar contracts (e.g., men's and women's basketball, men's and women's hockey, volleyball, football). The coaches use them for tax planning (e.g., allocating a portion of total compensation to supplemental retirement contributions rather than receiving everything as base salary). The University uses them to help control the overall cost of the contract (e.g., allocating a portion of total compensation to something other than base salary, since the cost/value of certain fringe benefits and other contractual payments are determined/calculated based upon base salary). The amounts listed in total compensation take into account the additional compensation earned by the coach for these other categories of income.

For the 2016-2017 academic year, the evidence revealed that the total compensation paid to non-shared salaried coaches in the men’s program (for 91.5% of the male athletes [418/457]) was \$11,277,479, and in the women’s program (for 91.8% of the female athletes [428/466]) was \$3,441,787. The average compensation of non-shared salaried coaches in the men’s program was \$331,690.56 and in the women’s program it was \$111,025.39.

With respect to head coaches, the University in the 2016-2017 academic year paid in total compensation \$6,577,205 for 10 men’s program non-shared head coaches and \$2,061,997 for 11 women’s program non-shared head coaches. The average salary for non-shared head coaches for the men’s program was \$657,720.50 and in the women’s program it was \$187,454.27.

OCR calculated the total funds allocated for the 2016-2017 academic year coaching salaries and then compared the percentage of funds used for coaching of women and for coaching of men. OCR found that the University spent approximately \$14,818,665 total compensation for its non-shared coaching

staff between the men's and women's teams. Of that, \$11,277,479 (76.8%) was earned by head and assistant coaches of men's teams, which comprised 49.5% of the athletes, and \$3,441,787 (23.2%) was earned by head and assistant coaches of women's teams, who comprised 50.5% of the athletes.

There are several comparable male and female sports that do not share coaches, including basketball, gymnastics, tennis, golf, ice hockey, and baseball/softball. In basketball, for the men's program, the head coach and three salaried assistants were paid \$XXXXXXX. The women's program head coach and three salaried assistants were paid \$XXXXXXX. The average compensation of the men's basketball coaches was \$XXXXXXXXXX for coaching 15 or 3.3% of the male athletes, and the average compensation of the women's basketball coaches was \$2XXXXXXXXXX for coaching 15 or 3.2% of female athletes. On average, the men's basketball salaried coaches received \$XXXXXXX more in salary than the women's basketball salaried coaches. This difference in compensation occurred despite the fact that the women's head basketball coach had more experience coaching both at the collegiate level (17 years for the women's coach and 12 years for the men's coach) and as head coach at the University (six years for the women's coach and five years for the men's coach) than the men's head basketball coach.

In gymnastics, for the men's program, the head coach and two salaried assistants were paid \$XXXXXX. On the women's side, the head coach and two salaried assistants were paid \$XXXXX. The average salary of salaried men's gymnastics coaches was \$XXXXXX for coaching 20 or 4.4% of male athletes, and the average salary of salaried women's gymnastics coaches was \$XXXXXX for coaching 17 or 3.6% of female athletes. On average, the men's gymnastics coaches received \$XXXXXX more in total compensation than the women's gymnastics salaried coaches. The difference in compensation is likely explained by the fact that the men's gymnastics coach has 20 more years of collegiate coaching experience than the women's gymnastics coach.

In tennis, for the men's program, the head coach and one salaried assistant were paid \$xxxxxxx. On the women's side, the head coach and one salaried assistant were paid \$XXXXXXXXX. The average total compensation of the men's tennis coaches was \$XXXXXXXXX for coaching 12 or 2.6% of male athletes, and the average total compensation of the women's tennis coaches was \$XXXXXX for coaching 11 or 2.4% of female athletes. On average, the men's tennis coaches received \$XXXXXX more in total compensation than the women's tennis coaches. This difference in compensation occurred despite the fact that the women's head tennis coach had more experience coaching both at the collegiate level (29 years for the women's coach and 21 years for the men's coach) and as head coach at the University (28 years for the women's coach and 18 years for the men's coach) than the men's head tennis coach.

In golf, for the men's program, the head coach and one salaried assistant were paid \$XXXXXX. On the women's side, the head coach and one salaried assistant were paid \$149,129.00. The average salary of salaried men's golf coaches was \$XXXXXX for coaching 14 or 3.1% of male athletes, and the average salary of salaried women's golf coaches was \$XXXXXX for coaching 7 or 1.5% of female athletes. On average, the men's golf coaches received \$XXXXXX more in total compensation than the women's golf coaches. This difference in compensation may be explained by the fact that the men's golf head coach had 2 more years of experience coaching than the women's golf head coach (7 years for the men's golf head coach and 5 years for the women's golf head coach).

In ice hockey, for the men's program, the head coach and two salaried assistant were paid \$XXXXXX. On the women's side, the head coach and two salaried assistant were paid \$XXXXXX. The average total compensation of the men's ice hockey coaches was \$XXXXXX for coaching 28 or 6.1% of male athletes, and the average salary of salaried women's hockey coaches was \$XXXXXX for coaching 25 or 5.4% of female athletes. On average, the men's ice hockey coaches received \$XXXXXX more in total compensation than the women's ice hockey coaches. This difference in compensation may be explained by the fact that the men's ice hockey head coach had 24 more years of experience coaching than the women's ice hockey head coach (35 years for the men's ice hockey head coach and 11 years for the women's ice hockey head coach).

Finally, in the comparable sports of baseball and softball, for the baseball program, the head coach and two salaried assistants were paid \$XXXXXX. On the women's softball side, the head coach and two salaried assistant were paid \$XXXXXX. The average salary of salaried men's baseball coaches was \$XXXXXX for coaching 35 or 7.7% of male athletes, and the average salary of salaried women's softball coaches was \$XXXXXX for coaching 19 or 4.1% of female athletes. On average, the men's baseball coaches received \$XXXXXX more in total compensation than the women's softball coaches. The men's baseball coach had 39 years of experience, while the women's softball coach had 13 years of experience, a difference of 26 years.

The head coaches of men's and women's cross country have additional coaching responsibilities. The men's cross country coach also serves as the head coach of men's track and field and the women's head coach serves as the second assistant coach of women's track and field. Neither coach receives additional compensation for their respective additional responsibilities. The men's head coach was paid \$XXXXXX more than the women's head coach. This difference in compensation may be explained by the fact that the men's head coach had more coaching responsibilities as the head coach of multiple teams and had experience coaching both at the collegiate level (20 years for the men's coach and 11 years for the women's coach) and as head coach at the University (20 years for the men's coach and 10 years for the women's coach) than the women's coach.

According to University counsel, coach salaries are based on market conditions, the coach's background and the coach's ability.

The Policy Interpretation states nondiscriminatory factors can affect the compensation of coaches, e.g., the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of compensation. OCR notes that coaches for the men's program are paid substantially more than coaches for the women's program. However, OCR found no evidence to conclude that the disparity in the compensation of coaches disadvantaged female athletes or denied female athletes and equal athletic opportunity to practice and complete.

#### *Duration of contracts*

For the 2016-2017 academic year, the evidence revealed that the average duration of contracts for salaried coaches in the men's program was 1.9 years, and in the women's program was 2.4 years, favoring the women's program slightly. Head coaches in the men's program were given contracts that

had the duration of 1 to 9 years, with the average contract duration of 4.2 years, whereas head coaches in the women's program were given contracts that had the duration of 2 to 9 years, with the average contract duration of 4.8 years. All assistant coach contracts, with the exception of two assistant coaches for swim and dive, had one-year contracts.

The disparity between the length of contracts for women's program head coaches and men's program head coaches does not seem to correlate with the years of experience of coaches and no coaches indicated that they were adversely affected because of the terms or conditions of their employment.

### Conclusion - Coaching

OCR reviewed the availability, assignment and compensation of coaches for the men's and women's athletic program. The ratio of men's and women's coaches to athletes in their programs is 1:10.63 and 1:11.65, respectively. On average, head coaches of men's teams had more coaching experience than head coaches of women's teams and higher salaries. However, head coaches of women's teams have slightly longer contracts.

OCR found no significant differences between coaches of men's and women's teams in the nature of coaching duties performed, working conditions, and other terms and conditions of employment. While testimony and survey information indicated that athletes typically believed that they received good quality coaching regardless of any differences in experience, contract lengths, and salaries of coaches, OCR noted concerns about the quality of the 2016 – 2017 men's golf and women's tennis head coaches. Based on the forgoing, the evidence is insufficient to conclude that the University has failed to provide equivalent benefits, treatment, services and opportunities to female athletes with respect to the availability, assignment and compensation of coaches, as required by 34 C.F.R. § 106.41(c)(5) and (6).

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

The Policy Interpretation lists six factors to be assessed in determining whether a recipient provides equal opportunities in the provision of locker rooms and practice and competitive facilities: (1) the quality and availability of the facilities provided for practice and competitive events; (2) the exclusivity of use of facilities provided for practice and competitive events; (3) the availability of locker rooms; (4) the quality of locker rooms; (5) the maintenance of practice and competitive facilities; and (6) the preparation of facilities for practice and competitive events.

In assessing the University's compliance with respect to this component, OCR reviewed the University's locker rooms, team rooms, and practice and competitive facilities during on-site visits in 2015 and 2018. The majority of the University's athletics facilities are located on the main campus, with the exception of the women's soccer stadium and practice field, the rowing boathouse, and the adjoining practice golf areas, which are located a short distance from the main campus. Additionally, as discussed above, in summer 2015, the University contracted with Hamline University (Hamline) and Concordia University (Concordia) for use their outdoor track and field facilities by men's and women's outdoor track and field teams. These contracts remained in place for the 2015-16, 2016-17, and 2017-18 academic years.

Prior to the conclusion of OCR’s investigation of the University’s provision of locker rooms, practice and competitive facilities, the University requested to resolve this component of the OCR investigation. A summary of OCR investigation to date is provided below.

The chart below shows the practice facility, competitive facility, and locker room for each team:

**Locker Rooms, Practice Facilities, Competitive Facilities 2016-2017**

<b>Team</b>	<b>Practice Facility</b>	<b>Competition Facility</b>	<b>Locker Room P: Practice LR C: Competition LR</b>
baseball	Seibert Baseball Stadium Indoor Football Field	Seibert Baseball Stadium	P: Bierman C: none
softball	Cowles Stadium Indoor Football Field	Cowles Stadium	P: Bierman C: Cowles Stadium
men’s basketball	Men’s Basketball Performance Center	Williams Arena	P: Men’s Basket Perf Ctr C: Williams Arena
women’s basketball	Women’s Basketball Performance Center	Williams Arena	P: Wmn’s Basket Perf Ctr C: Williams Arena
men’s gymnastics	Cooke Hall	Sports Pavilion	P: Cooke Hall C: Sports Pavilion
women’s gymnastics	Piek Hall	Sports Pavilion	P: Piek Hall C: Sports Pavilion
men’s ice hockey	Mariucci Arena	Mariucci Arena	P: Mariucci Arena C: Mariucci Arena
women’s ice hockey	Ridder Arena	Ridder Arena	P: Ridder Arena C: Ridder Arena
men’s swimming and diving	Aquatic Center	Aquatic Center	P: Aquatic Center C: Aquatic Center
women’s swimming and diving	Aquatic Center	Aquatic Center	P: Aquatic Center C: Aquatic Center
men’s tennis	Baseline Tennis Center	Baseline Tennis Center	P: Baseline Tennis Center C: Baseline Tennis Center

**Locker Rooms, Practice Facilities, Competitive Facilities 2016-2017 (continued)**

<b>Team</b>	<b>Practice Facility</b>	<b>Competition Facility</b>	<b>Locker Room P: Practice LR C: Competition LR</b>
women's tennis	Baseline Tennis Center	Baseline Tennis Center	P: Baseline Tennis Center C: Baseline Tennis Center
men's golf	Spring Hall, TCP, Various Local Golf Courses	Les Bolstad Golf Course, TCP	P: Bierman C: none
women's golf	Spring Hall, TCP, Local Golf Courses	Les Bolstad Golf Course, TCP	P: Bierman C: none
men's cross country	Les Bolstad Golf Course	Les Bolstad Golf Course	P: Bierman C: none
women's cross country	Les Bolstad Golf Course	Les Bolstad Golf Course	P: Bierman C: none
men's track & field (i)	Fieldhouse	Fieldhouse	P: Bierman C: none
women's track & field (i)	Fieldhouse	Fieldhouse	P: Bierman C: none
men's track & field (o)	Hamline/Concordia	None	P: Bierman C: none
women's track & field (o)	Hamline/Concordia	None	P: Bierman C: none
rowing	Boathouse	No home competitions	P: Boathouse C: None
soccer	Robbie Soccer Stadium Practice Field Indoor Football Field	Robbie Soccer Stadium	P: Biermann C: Robbie Soccer Stadium
volleyball	Sports Pavilion	Sports Pavilion	P: Sports Pavilion C: Sports Pavilion
wrestling	Bierman Basement	Sports Pavilion	P: Bierman C: Sports Pavilion
football	Football Performance Center (indoor) Outdoor Practice Fields (multiple)	TCF Bank Stadium	P: Football Performance Center C: TCF Bank Stadium

*Quality, Availability and Exclusivity of Practice Facilities*

The following teams practice in the same facility in which their competitions are held: men's and women's tennis, men's and women's swimming and diving, men's and women's golf, men's and

women's ice hockey, men's and women's cross country, men's and women's indoor/outdoor track & field, women's soccer, and women's volleyball. These facilities are discussed in detail in the competition facilities section below.

The baseball, softball and soccer teams all have specific practice fields adjacent to their competitive fields. The fields are well maintained, of appropriate size and specification for each respective sport, and are for the exclusive use of each team. Each team also uses its competition field for practices, weather permitting. Additionally, each team has access to the indoor football field as a practice facility. The indoor football field is a regulation size indoor field with artificial turf. There is padding covering the lower portions of all the walls, and netting covering the top areas of the walls. The ceiling is extensively peeling, and athletes from various teams reported debris from the ceiling will often fall down during practices. The turf appears in average condition.

Baseball athletes rated the indoor football field as "pretty good," citing the recent retrofitting of the facility for the baseball team. The softball and soccer athletes, however, reported that the air circulation in the facility is poor, the turf needed to be replaced, and the "fires prevention material falls when the balls hit it." The following athletes were adversely affected by the flaws of their indoor practice facility (the indoor football field): 35 baseball players (7.6% of male athletes), 19 softball players (4.1% of female athletes), and 27 soccer players (5.8% of female athletes).

Both the men's cross country and women's cross country teams practice by running outdoors, usually off campus. There is no designated practice facility according to the athletes.

Both golf teams have a practice putting, chipping and driving green adjacent to the soccer fields, which is in excellent condition. The remainder of practices for both golf teams occurs at off-campus locations, about 20-40 minutes away from campus. The golf athletes for both teams are responsible for providing their own transportation to the off-campus practice sites.

The men's and women's track and field (indoor) teams both reported practicing in the fieldhouse. The fieldhouse is in poor condition.<sup>11</sup> The men's and women's outdoor track and field teams (outdoor) have no practice facility on campus practiced at Hamline (4.4 miles from the University) and Concordia (4 miles from the University). The poor condition of the field house adversely affects 61 male track athletes (13.3% of male athletes) and 86 female track athletes (18.5% of female athletes).

Hamline's outdoor facility includes a nine lane, 400 meter track with a synthetic track surface. Concordia has an eight-lane, 400 meter track with a sprayed track surface. Restrooms are located close to the track at both locations; however there is no storage or locker room access available to athletes at either location. Athletes reported that they occasionally had to use portable restrooms because the permanent restroom locations are sometimes locked. Transportation for athletes to Hamline or Concordia is provided by University shuttle. Athletes are required to use the University locker rooms, shuttle to the practice location, and then return by shuttle to the University locker rooms. Both male and female athletes reported the shuttle bus ride lasts about 20 minutes to from pick up to drop off. Women's track and field (outdoor) athletes reported waiting for up to 30 minutes for a shuttle bus to pick them up

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<sup>11</sup> Additional details regarding the fieldhouse are included in the competition facilities section.

from practice to return them to campus. Athletes are also required to transport their own specific event equipment, such as poles for vaulting, to each practice location. Athletes reported that the distance for each practice location is too far to bike or walk.

The men's gymnastics team practices in Cooke Hall, in an enclosed area at one end of a gymnasium. The men's gymnastics practice facility is generally rated as being in poor condition. The practice area is cramped with equipment within the confined space. Due to the limited space, the practice area cannot hold a full gymnastics practice floor mat. Coaches and athletes reported that the vault runway is also 20-foot too short, the gym is too small to fit regulation size equipment (such as a full floor or a trampoline), and there is "barely enough room for our entire team to stretch together." Athletes also reported that much of the weight training equipment is old or donated. Male gymnasts reported issues with air circulation, causing extreme temperature changes in summer and winter, and wooden splinters causing a safety hazard due to the old equipment setup. The athletes further reported that the poor facility causes other schools to "have an advantage solely because of better training facilities," and that the training facility "causes us to lose many recruits." The University reported no plans for an update to this facility. The 20 male gymnasts constitute 4.4% of male athletes.

The women's gymnastics team practices in Piek Hall, in an area at least double the size of the men's gymnastics practice area. The area is large enough to hold a regulation size floor practice area. The coach told OCR the space is not big enough to make needed changes, referenced the facility's lack of air conditioning, and described the facility as "poor." Athletes reported that the facility is "old and small and cramped," like an old high school gymnasium. Athletes reported there was not enough room to store equipment; there was no space for have a foam pit, which would allow them to learn new skills and practice current ones "without having to land on a hard surface all the time"; and that the facility's "old TVs and systems in the gym can make it tough to operate and correct our own mistakes during practice from watching the screens that sometimes don't work." Athletes overall rated the facility between poor and average. The University reported no plans for an update to this facility. These poor conditions in Piek Hall adversely affect 17 female gymnasts (3.6% of female athletes).

The women's rowing team practices at the boathouse. Athletes rated the facility as average-to-good. Athletes reported that there was no fuel station, athletic medicine room or water filter in the facility. Athletes reported that the boathouse needed better air circulation and humidity as the air can get very dry, making it hard to breathe during workouts. Multiple athletes complained about the many broken stationary bikes. Athletes reported the tanking room was small, quite warm, and has poor water circulation which can be hard on athletes' backs. Athletes reported that since they share the boathouse with a men's club team, there is not enough room to work out. Athletes also reported that there is no parking at the boathouse, and instead the only option is to pay for their own parking permits from the city, without reimbursement from the University. The University reported no update to the athlete portion of the locker room, although the University recently updated the rowing coaches' suite. The poor conditions in the boathouse adversely affect 76 female rowers (16.3% of female athletes).

The wrestling team practices in the Bierman basement. The wrestling room is an L-shaped room with padded walls and floors, and is of average quality. Athletes reported the space was too small for the number of athletes on the team, not regulation size, and stated the team needed more mat space to prevent injuries. The space had a leaking pipe, no natural lighting and provided no way to get a stretcher

into the facility due to the small doorways and lack of elevator access. Athletes reported the practice facility had no circulation and was poorly ventilated, with one athlete describing it as a “dark dank little dungeon.” The majority of athletes rated the facility as poor. The University reported no updates to this facility. The poor conditions in the Bierman basement adversely affect 43 male wrestlers (9.4% of male athletes).

The men’s basketball team practices in the newly-constructed addition to Bierman, the Basketball Performance Center. The men’s practice basketball facility is located on the third floor of the Basketball Performance Center. The men’s practice area has 1 ½ courts which are surrounded by eight hoops. The men’s basketball locker room and the men’s training rooms are directly adjacent to the practice courts. The men’s basketball equipment room, located along the side of the basketball courts, includes washers and dryers and has stores basketballs, cones, towel, etc. The quality of the men’s basketball practice facility is excellent.

The women’s basketball team also practices in the new addition to Bierman, in the Women’s Basketball Performance Center, located on the 5<sup>th</sup> floor. The women’s basketball practice area is identical to the men’s practice area. The quality of the women’s basketball practice facility is excellent

The football team practices in the newly-built Football Performance Center. The indoor practice football field is used year-round on a regular basis by specialized teams for stretching, drills, and executing plays. It is a 100-yard long, regulation field comprised of turf. Appropriate marking and University designs are painted on the turf. The indoor football field has an electronic scoreboard and goal posts. Immediately adjacent to the Football Performance Center is the outdoor practice football area. The outdoor practice area is comprised of 1 ½ turf fields. The regulation field is 100-yards in length with paint markings every yard and goal posts at both ends. The half-sized field is 50 yards in length. The football practice facilities are of excellent quality.

The men’s and women’s basketball teams and the football team have exclusive use of their practice facilities, and reported no issues with the availability of the practice facilities. Baseball, softball and soccer share the indoor football field during inclement weather, but none of the teams reported issues with exclusivity of use when practicing in this space.

OCR determined that 124 (27.13%) of the University’s male athletes (men’s track and field [indoor], men’s gymnastics, wrestling) compared with 162 [34.76%] of the female athletes (women’s track and field [indoor], rowing) had poor practice facilities during the 2016-17 academic year.

#### *Quality, Availability and Exclusivity of Competitive Facilities*

All University competitive surfaces are regulation in dimension, designed specifically for the sport, and constructed of quality materials. With some exceptions, each venue has amenities for spectators (adequate seating, scoreboards, restrooms, and concessions).

The men’s ice hockey team competes at Mariucci arena, while the women’s ice hockey team competes at Ridder Arena. Mariucci Arena is an Olympic-size rink while Ridder is a National Ice hockey League (NHL) size rink. Both teams regularly practice and compete at each rink depending on the opponent.

Rinks have comparable amenities; however Mariucci has a larger seating capacity. Both rinks are well maintained and of high quality.

The baseball and softball teams each have their own competition fields, located on land adjacent to Bierman. Both fields are of high quality. The men's baseball team has a restroom in the dugouts, but no locker rooms by the field. The women's softball team does have locker rooms by the fields, but no restrooms in the dugouts.

The volleyball, soccer, wrestling, and men's gymnastics, women's gymnastics teams compete in the Sports Pavilion, which is of excellent quality. The men's basketball and women's basketball teams compete in Williams Arena, which is in excellent quality with many high quality amenities. The soccer team competes at the soccer stadium area, which is of high quality. The football team competes at TCF Bank Stadium, which in excellent condition with multiple amenities throughout.

The men's and women's tennis teams compete at the Baseline Tennis Center, and the men's swimming and diving and women's swimming and diving teams compete at the Aquatic Center. Both facilities are in regulation for the particular sport, include a variety of high quality amenities and are of excellent quality. The men's and women's golf teams compete at local golf courses in the area, which are of high quality.

The men's and women's track and field teams (indoor) both use the fieldhouse for competitions. The fieldhouse is managed by the University Recreation department and not University Athletics. The fieldhouse quality is poor. It has limited spectator seating, and no permanent concessions. Portable concessions are brought in for meets. A videoboard is also brought in for large meets. Spectator restrooms are small and old, and the University reported that portable restrooms are brought in for large meets.

Both male and female indoor track and field athletes raised issues with the quality of the fieldhouse. Athletes described the fieldhouse air as "musty," and complained of problems with air circulation in the facility. Additionally, Lane 6 of the indoor track cannot be used if other athletes are practicing/competing in throwing events; the sound system is broken; there is no digital scoreboard; and the track needs resurfacing. Both male and female athletes reported that the permanent restrooms are "old and small" and inadequate, and both spectators and athletes use the same facilities. There is insufficient bleacher seating for meets, and the seating that is available is too close to the track.

The men's and women's outdoor track and field teams do not have a competition field.

The University provided all teams with exclusive use of their competitive facilities for competition except for the track and field (outdoor) teams which do not have a competition facility for outdoor competitions. None of the teams reported any issues with the availability of their competitive facilities for competitions. OCR therefore determined there was no disparity regarding the exclusivity or availability of use of competitive facilities where they exist.

OCR determined that 61 (13.35%) male athletes compared with 84 (18.03%) female athletes (the track and field (outdoor) teams) had no competition facility during the 2016-17 academic year. Additionally,

61 (13.35%) of the University's male athletes (men's track and field (indoor)) compared with 86 (18.45%) female athletes (women's track and field (indoor)) had poor competition facilities.

#### *Quality of Practice Locker Rooms*

Seven teams (men's ice hockey, women's ice hockey, men's swimming and diving, women's swimming and diving, men's tennis, women's tennis, and volleyball) use the same locker room for practices and competitions. These locker rooms are all of excellent quality. The University reported that the women's ice hockey locker room had a limited remodel in 2015 and 2017 with new lockers, ceiling lights, an updated changing area and remodeled restrooms and showers.<sup>12</sup> The men's ice hockey team had a complete remodel of their locker room in 2016 including new areas within the locker room, a changing room, a training room, a video/film room, team lounge and coaches suites.<sup>13</sup> The University did not report any plans to further upgrade the women's ice hockey locker room.

Both the men's and women's swimming and diving teams complained that their locker rooms were often dirty and stated the presence of mold was common. Men's swimming and diving athletes reported that the locker rooms were old, with some lockers starting to rust. Women's swimming and diving athletes reported the locker room as being much colder than the pool area, stated that restroom stall doors not closing properly, and complained that two-thirds of the shower heads in their locker room do not work. OCR's onsite examination of these locker rooms confirmed their poor quality.

Five teams (men's and women's gymnastics, wrestling, softball and soccer) have one practice locker room, and a separate competition locker room. The women's gymnastics, softball, and soccer practice locker rooms are average, while the men's gymnastics and wrestling locker rooms are of poor quality. The soccer team shares its practice locker room restroom with the women's track and field (indoor and outdoor) teams and the women's cross country team. The women's gymnastics practice locker room has outdated furniture including wood lockers, and mismatched, well-used couches in the middle of the locker room area. The women's gymnastics athletes reported they never use the showers in their locker room because of poor water pressure and a foul water smell. Softball athletes reported that three of the nine showers do not work in their practice locker room, and there is only one toilet stall in the locker room.

The men's gymnastics locker room is of poor quality. OCR's onsite observations showed the men's gymnastics locker room is cramped, with dark lighting, and outdated restrooms. Athletes reported that the locker room is too small for the athletes, does not have enough showers, and the ice machine in the locker room drains leave the floor wet on a regular basis.

The wrestling team shares their locker room showers with the baseball team. Wrestling athletes raised concerns that their locker room did not have enough room for all the athletes. Athletes described the space as "cramped," with only one sink, three restroom stalls, four urinals and only four of eleven showers working properly.

The Basketball Performance Center houses the men's and women's practice locker rooms. The men's basketball locker room is located on the 3<sup>rd</sup> floor of the Basketball Performance Center. It consists of 16

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<sup>12</sup> The University reported the cost for the women's ice hockey team's "limited" locker room update was \$227,072.

<sup>13</sup> The University reported the cost for the men's ice hockey team's "complete remodel" of the locker room was 4.3 million.

large lockers with the names of each player painted on the locker, televisions, recliners and mirrors. The locker room has eight shower stalls, four sinks, two urinals and two toilet stalls, one of which is wheelchair accessible. The men's basketball locker room is of excellent quality.

The women's basketball practice locker room, located on the 5<sup>th</sup> floor of the Basketball Performance Center, is identical to that of the men's basketball team, except the restroom area has four toilet stalls (one of which is accessible). The women's basketball locker room is of excellent quality.

The football practice locker room is located on the 3<sup>rd</sup> floor of the Football Performance Center. The locker room is a large, luxurious room. The lockers are configured in an oval. The oval has two rings – an inner ring and an outer ring. The outer ring of the oval has lockers for the 2<sup>nd</sup> string football players, and the inner ring of the oval is for the 1<sup>st</sup> string players who get a lot of playing time. All of the lockers are about six-feet tall, four-feet wide, with small lockers next to each in which a player can lock valuables. Each locker has the player's name and hometown painted above the locker. There are about 16 large screen televisions evenly placed above the lockers in the inner ring of the oval. The locker room has approximately 16 shower stalls, four toilet stalls (one of which is accessible), and four urinals. The football practice locker room is of excellent quality.

Nine teams: baseball; rowing; men's and women's track and field (indoor and outdoor); men's and women's cross country; and men's golf have practice locker rooms, but no competition locker room. Baseball athletes described the practice locker room as being far from the baseball field, and that the locker room's air quality and ventilation is poor.

The men's track and field (indoor) and (outdoor) and men's cross country teams share their locker room with the men's golf team. Athletes reported that the locker room ventilation is poor; the room is consistently very humid and hot; the restrooms do not have enough stalls for the athletes; and the showers are often broken. Men's golf athletes reported that the locker room was "extremely hot."

The women's track and field (indoor) and (outdoor) and women's cross country teams share the restroom of their practice locker room with the soccer team. The practice locker room is on the University campus. Athletes describe the practice locker rooms as "super, super poor", and stated the locker room is always hot because there is no air conditioning. They also expressed security concerns stating money has been stolen from the lockers. Athletes also commented that the lockers are not large enough to store their gear. Athletes also reported they were told they had to fundraise in order to build a new locker room or renovate the current space.

Athletes on the rowing team reported their locker room was very "cramped," and only had seven showers and three restroom stalls for almost 80 athletes. Athletes reported that the restrooms often dirty and expressed concern that "it takes a long time to restock supplies if they run out of anything like hand soap." Athletes also reported the locker room showers as poor, as the water "barely comes out".

The University reported that the women's golf team used a practice locker room in Bierman. The women's golf team, however, reported the team does not have a practice locker room, with one athlete reported that, in the three years she has been on the golf team, the team has not had a practice locker room.

The men's basketball, women's basketball and football teams have new locker rooms, practice facilities, offices, and weight rooms in the Athletes Village. The football team also has a new "football performance center" which houses a new weight room, locker room, equipment room, athletic medicine room, offices, position meeting rooms, large team meeting rooms and a new indoor football practice facility.

OCR concluded that 291 (63.68%) of male athletes (men's swimming and diving, men's gymnastics, baseball, wrestling, men's track and field(indoor and outdoor), men's golf, men's cross country) compared with 327 (70.17%) of female athletes (women's swimming and diving, rowing, women's track and field (indoor and outdoor), women's cross country) have practice locker rooms in poor condition.

#### *Quality of Competition Locker Rooms*

The baseball, rowing, men's and women's golf, men's and women's track and field (indoor and outdoor) men's and women's cross country teams have no competition locker rooms. The men's and women's basketball, football, men's and women's ice hockey, men's and women's tennis, volleyball, softball, wrestling, men's and women's gymnastics and soccer teams have excellent competition locker rooms. The men's and the women's swimming and diving teams use the same locker room for practice and competitions and it is in poor quality.

OCR determined that 229 (50.12%) male athletes (men's basketball, football, men's ice hockey, men's tennis, wrestling, men's gymnastics) compared with 132 (28.33%) female athletes (women's basketball, softball, women's ice hockey, women's tennis, volleyball, women's gymnastics, soccer) had excellent competition locker rooms. OCR further determined that 189 (41.36%) of male athletes (baseball, men's golf, men's track and field indoor and outdoor), men's cross country) compared with 296 (63.52%) of female athletes (rowing, women's golf, women's track and field (indoor and outdoor), women's cross country) have no competition locker room. Finally, OCR determined that 39 (0.09%) male athletes (men's swimming and diving) and 38 (0.08%) female athletes (women's swimming and diving) had poor competition locker rooms.

#### *Separate Team Room and Other Locker Room Amenities*

The baseball, softball, men's golf, women's golf, men's gymnastics, women's gymnastics, men's cross country, women's cross country, men's and women's track and field (indoor and outdoor), wrestling, rowing, and soccer teams do not have separate team rooms apart from their locker rooms. These teams have older couches and small appliances, such as a mini refrigerator or a small microwave, in the middle sections of their locker room. The quality of the furniture is poor, mismatched and well-worn. Some of the areas also have a television. The Men's gymnastics locker room is too small to have a seating area.

Five men's teams (football, men's basketball, men's ice hockey, men's swimming and diving, men's tennis) and five women's teams (volleyball, women's basketball, women's ice hockey, women's swimming and diving, women's tennis) have team rooms separate from their locker rooms. The men's and women's tennis and men's swimming and diving and women's swimming and diving teams share a team room that is separate from their locker room areas. The swimming and diving team room is sparse

in furniture or any amenities. The shared tennis team room is basic in furniture and amenities. The men's and women's ice hockey teams each have individual, separate team rooms of comparable, excellent quality.

The women's volleyball team has an excellent team room. The volleyball team room includes leather chairs, chairs, couches, bean bag seats, a flat screen TV, and two tables and chairs. There is a beverage cooler, but no other kitchen items. The team room is one half of a large room that also houses the film room on the opposite end.

The men's basketball team has an excellent team room. It is located on the 3<sup>rd</sup> floor of the Basketball Performance Center. The focal point of the team room is a floor-to-ceiling large screen television on which players can watch videos of practices, games, or regular television shows. There are 28 padded movie-style chairs situated in front of the screen. Behind the chairs is a kitchen with cabinets for food storage, a large refrigerator stocked with healthy perishables such as milk, yogurt, fruit and juice. Players can access the practice basketball court through the team room.

The women's basketball team room is also excellent. It is located on the 5<sup>th</sup> floor of the Basketball Performance Center. It is identical to the men's team room.

The football team room is located on the 4<sup>th</sup> floor of the Football Performance Center. The team room comprises about half of the entire 4<sup>th</sup> floor. It includes a recreation room with a large screen television, video games and consoles, foosball game, a pool table, and an air hockey table. There are couches and comfortable chairs throughout the room. There is a large kitchen with cabinets and a refrigerator. This team room is of excellent quality.

OCR determined that 205 (44.86%) male athletes (football, men's basketball, men's ice hockey, men's swimming and diving, men's tennis) compared with 107 (22.96%) female athletes (women's basketball, women's ice hockey, women's swimming and diving, women's tennis, volleyball) have a team room separate from their locker room. OCR further determined that 252 (55.14%) male athletes (baseball, men's cross country, men's golf, men's gymnastics, men's track and field(indoor and outdoor), wrestling) compared with 359 (77.04%) female athletes (softball, women's cross country, women's golf, women's gymnastics, women's track and field(indoor and outdoor), rowing, soccer) have no separate team room.

The men's and women's basketball, football and the volleyball team have a video/film area with tiered seating. The football team has a large conference room, a steam room within the football coaches' locker room, and a large, separate recruiting room at TCF Stadium. The recruiting room has multiple tables and chairs, mannequins in different football uniforms, leather seating areas and multiple flat screen televisions throughout.

### *Availability*

All teams except baseball, wrestling, men's and women's track and field (indoor and outdoor), men's and women's cross country, and soccer had exclusive use of their practice locker rooms. The above listed teams share areas of their locker room spaces, but otherwise are not restricted from access. The

men's and women's gymnastics teams, and the wrestling team share one competitive locker room. The men's and women's gymnastics, and wrestling teams had exclusive use of the competitive locker rooms during each team's competitions only. Athletes use the locker room during the competition, but are not allowed to leave items in the competitive locker rooms overnight.

#### *Maintenance and Preparation of Practice and Competitive Facilities*

Various University departments (facilities management, grounds crew, arena staff, pool staff, etc.) maintain the respective facilities for practices and competitions. Coaches and athletes rated the maintenance between good and average for all sports. Accordingly, OCR found no disparity regarding the maintenance and preparation of practice and competitive facilities.

#### *Conclusion - Resolution Agreement*

On September 17, 2018, the University submitted the Agreement in which it pledges to assess its compliance in the issue areas noted and, working collaboratively with OCR, to take proactive measures to resolve any deficiencies identified as a result of its assessments.

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

The Policy Interpretation lists five factors to be assessed in determining whether a recipient provides equal opportunities in the provision of medical and training facilities and services: (1) availability of medical personnel and assistance; (2) health, accident and injury insurance coverage; (3) availability and quality of weight and training facilities; (4) availability and quality of conditioning facilities; and (5) availability and qualifications of athletic trainers.

In assessing compliance with this component, OCR reviewed the University's policies and procedures, surveyed athletes, and visited medical and training facilities.

Prior to the conclusion of OCR's investigation of the University's provision of medical and training facilities and services, the University requested to resolve this component of the OCR investigation. A summary of OCR investigation to date is provided below.

#### *Availability of Medical Personnel and Assistance*

Physicians have offices in seven different athletic facilities on campus. Trainers make the initial assessment of any student-athlete injuries and may refer a student-athlete to a physician when necessary. The University reported that it maintains a "team of physicians who are orthopedic surgeons and primary care-sports medicine physicians."

#### *Health, Accident and Injury Insurance Coverage*

The University requires that all student-athletes have health insurance as a condition of participation in University athletics. Students may enroll in the University-sponsored Student Health Benefit Plan, with the charge automatically added to their University account. The University also holds a policy for all student-athletes that serves as a secondary insurance provider for athletic related injuries to cover any

remaining out of pocket expenses. The same secondary policy coverage is provided to all student-athletes.

### *Availability and Quality of Training Facilities*

There are multiple training rooms and training spaces throughout different athletic facilities within the University campus. The football team has a full training room in the Football Performance Center and TCF stadium. The men's basketball and women's basketball teams have full training rooms in the Basketball Performance Center. The men's ice hockey team has a separate training room in Mariucci Arena, which received a complete remodel in 2016, for their sole use. The Aquatic Center's training space is used by the men's and women's swimming and diving teams and the men's gymnastics team. The Williams Arena training room is used by the women's gymnastics, volleyball, rowing and wrestling teams. The Ridder Arena training room is used by the women's ice hockey, men's tennis and Women's tennis teams. The remainder of the teams (baseball, men's cross country, men's and women's track and field (indoor and outdoor), men's and women's golf, wrestling, softball, women's cross country, and soccer teams use the Bierman Training Room.

The training rooms are available for both appointments and on a drop-in basis. The majority of the training rooms have between one to two separate examination rooms within the training room space. There is an examination room outside of the men's track and field/men's cross country locker room that is currently being used for storage. The enclosed examination rooms resemble a doctor's examination room, with an examination bed, an x-ray reader, a sink, storage cabinets, and blood pressure and other miscellaneous medical instruments.

The majority of the training rooms were of comparable size, and had 4 to 5 examination beds, ice baths, various cardio machines, free weights, and other exercise equipment such as exercise balls, foam rollers, etc., storage areas of various sizes, sinks, ice machines and office space.

The Aquatic Center training space, which is used by men's women's swimming and diving, and the men's gymnastics teams, does not have a separate examination room. There are also dedicated training rooms for both Robbie Stadium (women's soccer) and Cowles Stadium (softball), however both were sparse in amenities, and consisted of 1-2 examination tables, an ice machine (Robbie only) and a sink (Cowles only). Conversely, the training room at TCF Bank Stadium (football) was quite large with 12 examination tables, cardio machines, a large open counter space with cabinet storage, ice baths in a separate room, two separate enclosed examination rooms; multiple flat screen televisions, and a trainer office with lockers. TCF Stadium also has a designated visiting team examination room that contained two wood folding tables and chairs.

The football training room is located in the Football Performance Center; it is significantly larger and offers more amenities than all other training facilities. The football training room has twelve individual examination/massage tables with one closed examination room. The training room has several treadmills and stationary cycles, two water treadmills, several ice tubs and rehabilitation equipment such as medicine balls, free weights, foam rollers, steps, exercise balls and resistance bands. There are several flat screen televisions throughout the room, and a separate room for an ice machine and additional storage. There are several offices for assistant trainers, and a large storage area.

The football team has exclusive use of the training facilities at the Football Performance Center and TCF Stadium. The men's ice hockey team is the only other team with exclusive use of their training facility. The remainder of locations report servicing multiple teams. Athletes described the quality of the training rooms as "excellent, good and average" depending on location. The training room servicing the men's and women's swimming and diving teams and the softball training rooms were described as average.

Multiple teams use Bierman as their main training facility. Baseball athletes commented that Bierman needed to be upgraded because "there are too many sports using the same, small training room." The women's gymnastics team reported that the ice tubs need to be bigger. The women's cross country and women's track and field teams echoed this sentiment, and commented that there is sometimes not enough equipment or space for all the athletes that need to use the facility, and that "we get football hand-me-downs." Female track and field athletes also described the facility as "crowded," with "ripped tables," and "equipment breaks a lot."

Athletes from the women's ice hockey team, which uses the Ridder Arena training facility, reported that the training facilities are outdated and too small, but maintained well. Athletes from the women's ice hockey team reported their training room "need[s] hot and cold tubs, [we] still have the tin baths", and noted that "the men's ice hockey training room got redone last year and now they have a sauna, x-ray, state of the art, hot and cold whirlpools."

The rowing and volleyball teams use the Williams Arena training room. Rowing athletes overwhelmingly reported complaints about trainer availability and training room equipment. Rowing athletes also reported that the bikes and other rehab equipment needed to be updated. Volleyball athletes reported that the facility was too small and could be very crowded and frustrating.

OCR determined that the Bierman Training Facility was the most heavily used facility for both male and female teams. The investigation showed that six of the twelve (50.00%) men's teams (baseball, men's cross country, men's golf, wrestling, men's track and field(indoor and outdoor)), compared with seven of the thirteen (53.85%) women's teams (softball, women's cross country, women's golf, soccer, softball, women's track and field(indoor and outdoor)) used Bierman as their main training facility. This equates to 232 male athletes (50.77%) compared with 285 (61.16%) female athletes assigned to the Bierman training facility. OCR determined that female athletes are disproportionately affected by 7.31% in the availability and quality of training facilities.

#### *Availability and Quality of Weight and Conditioning Facilities*

There are three specific weight rooms designated for student-athlete use, the Bierman Weight Room (men's track and women's track and field (indoor and outdoor), men's and women's cross country, men's and women's golf, women's gymnastics, women's swimming and diving, wrestling, and baseball), the Ridder Weight Room<sup>14</sup> (Men's tennis, and women's tennis, rowing, softball and volleyball) and the Mariucci Weight Room (men's and women's ice hockey, men's swimming and

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<sup>14</sup> The University reported that for three months in the spring of 2017, the women's swimming and diving teams were temporarily assigned to Ridder Weight Room due to changes in strength and conditioning staff. The University confirmed that for the 2017-18 academic year, the women's swimming and diving team is assigned to the Biermann Weight Room

diving, women's soccer). The Men's gymnastics athletes reported using the recreation center on campus for weight and conditioning.<sup>15</sup>

The men's and women's basketball teams share the weight and conditioning facility, which is located on the 4<sup>th</sup> floor of the Basketball Performance Center. It provides several sets of dead weights and benches, approximately 12 treadmills, 16 cardio machines such as stationary bicycles and stair climbers, medicine balls, exercise balls, foam rollers, exercise bands, ropes, and floor mats.

The football team's weight and conditioning facility comprises an entire floor of the Football Performance Center. The floor is comprised of ergonomic rubber and is about the size of a football field. There are about 20 weight individual lifting stations which offer a full range of dead weights from 10 to 100 pounds, benches and metal frames where men can do pullups. The facility has 20 stationary bicycles on a running track, which is located one floor above the weight and conditioning facility, around the circumference of the room. The weight and conditioning facility is of excellent quality.

The University reported that individual strength coaches determine which facility the team uses. Only the football team has exclusive use of the weight and conditioning facilities. All other teams are assigned specific times to use the weight and conditioning room. Both men's and women's team members reported that they worked out in the weight room during one of their two daily practices, about three to five times per week. At times, they would have to share the weight room with athletes on another team. All of the weight rooms are available on a drop-in and schedule basis. Strength coaches are assigned to each team. Football has a total of four strength coaches assigned to the team, while men's and women's ice hockey, women's golf, softball, and volleyball have two strength coaches assigned to the team. The remaining teams have one strength coach assigned per team. All teams reported being supervised during their workouts in the weight room.

Student-athletes reported the weight rooms can get crowded and they often wait for the machines. Several of the athletes from various teams reported that Bierman and Ridder were quite crowded, resulting in athletes having to share equipment.

The Bierman Weight Room is the largest of the three facilities. Bierman is two levels, with the bottom level holding multiple weight equipment and individual weight stations, which were last replaced in 2011. The upper level is a full floor of cardio machines, which were last replaced in 2014.

Student-athletes reported Bierman as an "excellent" facility, with many athletes attributing its high quality to the fact that it previously served as the football team's weight room. Following the opening of the Athletes Village in 2017, athletes reported that the weight room was "old" and "average." Wrestling athletes reported that the facility is too small for the number of sports that use it. Women's track and field athletes told OCR that there are not enough cardio machines, and reported being told to go to the recreation facility if they wanted to use elliptical machines because the Bierman machines were broken.

The Mariucci Weight Room is located in the Mariucci Ice Hockey Stadium. The University reported that the majority of equipment is approximately 20 years old. OCR's visual inspection showed that it has

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<sup>15</sup> The University reported that the men's gymnastics team is not assigned a weight room and instead trains in Cooke Hall per coaching staff preference.

multiple cardio and weight machines throughout an open space. The cardio area was cramped with machines close together. There were multiple individual weight lifting stations, and a second room with free weights and open benches. The equipment appeared in good condition. Athletes described the Mariucci facility as “average to good” and said the weight room was well maintained but somewhat “outdated”.

The Ridder Weight Room appears to be just under half the size of the Bierman weight room. Ridder is approximately 13 years old. The University reported the majority of the equipment dates back to 2002 or is older Bierman received when Bierman was updated. Ridder appeared in good condition; however, it was narrower than the other two facilities, and has a cramped cardio section towards the rear of the gym.

A number of athletes raised concerns about the Ridder facility. Athletes described the facility as being a “renovated closet,” and noted that facility was used mostly by female athletes. Athletes reported that Ridder gets “hand-me-down” equipment from Bierman, has no air conditioning, and the cardio equipment is often broken. Athletes also commented that “air circulation is poor, especially in the back area where the cardio machines are located.” Volleyball athletes reported that it is “outdated and too small for the amount of teams that work out in there.”

Rowing athletes also reported issues with the Ridder weight room. The athletes reported that the facility is too small for the whole team to lift at once, so the team schedules lifting sessions. If an athlete is unable to lift during the times provided, the athlete then has to go to the University Recreation Center to lift on their own. Some athletes reported that they prefer to use the Recreation Center because Ridder is “too small or too crowded.”

During OCR’s investigation, six of the twelve (50.00%) men’s teams (men’s track and field(indoor and outdoor), men’s cross country, men’s golf, wrestling and baseball), and six of the thirteen (46.15%) women’s teams (women’s track and field(indoor and outdoor), women’s cross country, women’s golf, women’s swimming and diving, women’s gymnastics) were assigned to the Bierman Weight Room. OCR determined that 50.77% of male athletes (232) compared to 59.01% of female athletes (275) were assigned to Bierman Weight Room.

Two of the twelve (16.67%) men’s teams (men’s ice hockey, men’s swimming and diving), and two of the thirteen (15.38%) women’s teams (women’s ice hockey, soccer) were assigned to Mariucci Weight Room. OCR determined that 14.66% of male athletes (67) compared to 11.16% of female athletes (52) were assigned to Mariucci Weight Room.

One of the eleven (0.08%) of the twelve men’s teams (men’s tennis), compared with four of the thirteen (30.77%) women’s teams (women’s tennis, rowing, softball, volleyball) were assigned to the Ridder Weight Room. OCR determined that 0.03% of male athletes (12), compared with 26.61% of female athletes (124) being assigned to Ridder Weight Room.

#### *Availability and Qualifications of Athletic Trainers*

All teams have an assigned trainer certified by the National Athletic Trainers’ Association Board of Certification. Trainers classified as ‘graduate assistant’ are currently enrolled in a master’s program at

the University, but are still certified. According to the University, all teams are assigned an assistant athletic trainer (AAT). Some teams also have a graduate assistant trainer assigned to the team in addition to an AAT.

According to the University's Director of Medicine for the Department of Athletics (Director of Medicine), priority for assigning trainers is given to sports with high injury rates, as determined from data provided by the NCAA. Priority is also given for sports with large rosters.

Team trainers travel with all teams except the men's and women's golf teams. All teams have a trainer present at home competitions. Teams reported their trainers were present at practices for all teams except the men's and women's cross country teams, men's and women's golf teams and rowing.

According to the University, the football team is the only team with four trainers assigned (two AATs, one associate athletic trainer and one graduate assistant trainer). The University reported six men's teams (baseball, men's cross country, men's track and field (indoor and outdoor), men's swimming and diving and men's tennis) and eight women's teams (softball, women's cross country, women's track and field (indoor and outdoor), women's gymnastics, women's swimming and diving, women's tennis and rowing) are assigned one AAT and one graduate assistant trainer to the team. The remaining teams are assigned one AAT.

The majority of the athletes and coaches reported no issues with the availability of trainers, and reported that trainers are usually available by appointment and drop-in basis. However, women's tennis athletes reported only have one trainer, a graduate assistant, with whom they had inconsistent because the graduate assistant class scheduled, at times, conflicted with the team's practices and competitions. Also of note, women's swimming and diving athletes reported the team does not have a full-time trainer, in spite of the University's report to OCR stating the team was assigned two trainers.

Multiple rowing athletes reported that there is only one trainer, a graduate assistant, assigned to the team. These reports conflict with the University's report that one graduate assistant and one AAT were assigned to the rowing team. Rowing athletes reported that rowing "is the second to highest injury producing sport—[the] injury rate is 15.2%."

### *Conclusion - Resolution Agreement*

On September 17, 2018, the University submitted the Agreement in which it pledges to assess its compliance in the issue areas noted and, working collaboratively with OCR, to take proactive measures to resolve any deficiencies identified as a result of its assessments.

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

The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of housing and dining facilities and services: (1) housing and (2) dining facilities and services or other related special services provided for student-athletes.

#### *Housing*

The University operates nine residence halls and three apartment-style buildings. No special housing is allocated for student-athletes. The University reported that the Athletics Department polls coaches to determine the need for on-campus housing. Student-athletes are asked to a first and second choice for on-campus housing. The Athletics Department then works with Student Housing to reserve housing for the student-athletes. There are no special services provided as part of the housing arrangements. The University reported, and the student-athletes confirmed, that freshman typically live on campus, although it is not required, while upperclassmen typically live off campus. The University reported, and the student-athletes confirmed, that the student-athletes living on campus were placed in their first or second housing choices, regardless of sex. OCR determined that no special services are provided to male or female athletes as part of the housing arrangements.

#### *Pre-Season and Post-Season Housing*

The University reported that during the 2016-17 academic year, it provided preseason housing to 28 football athletes and four volleyball athletes. The University also provided post-season housing to seven baseball athletes, four men's tennis athletes, one men's track and field athlete and five rowing athletes. OCR determined there was a slight disparity in the amount of preseason housing provided to male athletes when compared to female athletes, however it was sport-specific. OCR found no evidence to show that any athlete requested and was denied pre or postseason housing.

#### *Meals*

Student-athletes with a dining plan have access to any dining facility on campus. Student-athletes students living off campus may purchase a University meal plan but are not required to have a meal plan. Students living on campus are required to have a meal plan.

The University reported that in the 2016-17 academic year, 68 male athletes and 58 female athletes had meal plans for the fall semester, and 69 male and 59 female athletes had meal plans for the spring semester.

A dining facility available to all University students is located on the first floor of the addition to Bierman, also called the Athletes Village. The dining facility is open only to student-athletes for dinner but is open to all University students for breakfast and lunch. The facility is closed on weekends. The dining facility has several stations with different types of food offerings, such as a salad bar, a grill, a pizza bar, a taco bar, chicken/beef, etc. The dining facility is all-you-can-eat. Adjacent to the dining facility is a small kitchen, which is accessible only to student-athletes until 10:00 pm daily. The kitchen has several large refrigerators stocked with healthy snacks, like Gatorade, yogurt, fruit, juice, milk all free of charge to all student-athletes.

#### *Pre-game Meals and Training Tables*

Pre-game meals are meals that are eaten together as a team before home games. The University reported that the baseball, softball, men's and women's basketball, men's and women's ice hockey, men's and women's tennis, men's cross country, men's track and field (outdoor), football, wrestling, rowing,

soccer and volleyball all receive pregame meals. However, student-athletes on the women's tennis and the men's track and field (indoor) teams reported to OCR they do not receive pregame meals. The men's swimming and diving, and women's track and field (indoor) teams reported they sometimes receive a pregame meal, while the women's golf, softball and women's track and field (outdoor) teams reported they only receive a pregame meal for away competitions.

The University reported that the head coach for each team determined if the team gets a pre-game meal, except for men's basketball, men's and women's track and field and women's cross country where the Director of Operations for each team made the decision. The football team's dietician made the meal decision for the football team.

In academic year 2016-17, OCR determined that 8 (66.67%) of the 12 men's teams, and five (38.46%) of the 13 women's teams were always provided with pre-game meals.<sup>16</sup> Three (25.00%) of the 12 men's teams and six (46.15%) of the 13 women's teams were never provided with pre-game meals.

OCR further determined that in academic year 2016-17, 324 (70.9%) of the 457 male athletes, and 199 (42.7%) of the 466 female athletes were always provided with pre-game meals. The University reported that 74 (16.2%) of the 457 male athletes and 284 (60.9%) of the 466 female athletes were never provided with pre-game meals.

Training tables are meals that are provided to the entire team in a separate area for team-related discussions. The University reported that it is at the coach's discretion whether to budget for training tables. Coaches can request an increase for meal-related expenses, which are then evaluated by the University during the budgeting process. The head coaches make the decision whether their teams have training tables for all teams except for the men's basketball, football, men's and women's track and field, men's and women's cross country teams. The football dietician decides for the football team, while the Director of Operations for the specific team decides for the men's basketball, men's and women's track and field, men's and women's cross country teams.

The University reported that the University provides the men's basketball team athletes a training table two times a day, five times a week. The University provides the women's basketball team a training table one time a day, five days a week. The Football team is provided a training table two times a day, five times a week. Men's ice hockey and women's volleyball reported receiving training tables on a "regular" basis. Women's ice hockey and women's soccer reported occasionally receiving training tables, but there is no set schedule.

#### *Meals Provided During Breaks*

The University reported that it provides \$25 per day per diem to student-athletes during breaks when student-athletes are required to be on campus. The University provides per diem to students who live both on and off campus. The per diem amount is eliminated or reduced accordingly if the team provides some or all of the meals during the break. According to the University, the decision on whether to provide meals or to provide a per diem is made by the coaching staff for the team.

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<sup>16</sup> These numbers do not include men's track and field (indoor), softball, or women's tennis since the information the University provided and the information the student-athletes provided is contradictory for these teams.

Student-athletes reported that per diem was provided to the baseball, softball, men's and women's gymnastics, women's tennis, and men's and women's basketball. The football team ate meals at the athletic complex during breaks, while the men's ice hockey team reported receiving two meals per day at the rink during breaks. The women's ice hockey team reported receiving meals two days a week and during the weekend, and also receiving per diem. The majority of men's and women's cross country athletes and the men's and women's track and field athletes reported receiving per diem, although a few of the female athletes reported that some athletes get per diem if they are the "top athletes" while others do not. Rowing athletes reported that they are required to stay on campus during spring break, so the rowers who live in a residence hall (usually the freshmen) are given per diem because the dining facilities are closed.

The women's swimming and diving team athletes reported that athletes who make the NCAA team and must stay on campus during spring break receive per diem. One male swimming and diving athlete reported that he has never received per diem even when required to be on campus, even when the dining facilities are closed. Another male swimming and diving athlete reported that per diem may be given, but usually athletes pay on their own. Some wrestling athletes reported that they have never received per diem and always paid for their own food, while others reported that the athletic department occasionally pays for food.

#### *Conclusion - Housing and Dining Services and Facilities*

OCR's investigation established that the University provides no special services to male or female athletes as part of the housing arrangements and that it did not deny any athlete request for pre-season or post-season housing. OCR's investigation revealed that during the 2016-2017 academic year the University provided athletes on men's and women's teams equal opportunities with regard to housing and dining facilities, services, and other special services during the 2016-2017 academic year. Accordingly, OCR has determined that the preponderance of the evidence is insufficient to conclude that the University has failed to provide equivalent opportunities to female athletes to receive housing and dining services, as required by 34 C.F.R. §106.41(c)(9).

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

The Policy Interpretation lists three factors to be assessed in determining whether a recipient provides equal opportunities in the provision of publicity: (1) availability and quality of sports information personnel; (2) access to other publicity resources for men's and women's programs; and, (3) quantity and quality of publications and other promotional devices featuring men's and women's programs.

#### *Availability and quality of sports information personnel*

The athletic department develops, on a yearly basis, a Communications Plan and a Marketing Plan. Each Communications Plan includes a season preview, individual student-athlete spotlights, and a traditional and social media calendar. Each Marketing Plan includes a 16-year attendance history, the prior season's competitive schedule, the prior season's actual ticket sales versus ticket sales goals, a summary of the

prior season's in-game atmosphere, and for the upcoming competitive season, a ticket promotions plan and a projection of the season's needs.

According to the University, each intercollegiate athletic team's communications and publicity services are accomplished by a communications lead and assistants. OCR verified that each men's and women's athletic team has a communications lead who may be supported by a paid graduate assistant, an entry-level employee, or a paid student intern (Communications Team). A communications lead has subject matter expertise in the areas of social media, media training, writing/editing, media relations/outreach, championships, events, community outreach, crisis/issues management, strategy and planning. A communications lead provides each team with full social media support, which is content and advertising driven. A communications team produces publicity materials and promotional devices, including website and social media content, for the sport for which he or she is responsible.

*Quantity and quality of publications and other promotional devices featuring men's and women's programs.*

The Assistant Athletic Director designs and produces a media guide for football, men's ice hockey, and men's and women's basketball. Each media guide is a 5 ½ x 8" glossy, professionally bound, publication which includes the competitive schedule, statistics and record of the sport from the previous season, event/season/career statistics for individual student-athletes, event and seasonal records for the team, biographical materials on administration and coaches, a summary of the season's opponents, and general information about the University.

The University has a website that is separate and distinct from the University's general website, which features its intercollegiate athletic teams.<sup>17</sup> The website has a navigation link to each team's webpage, Facebook account and Twitter account. Each team webpage has a link to a team roster, competitive schedule, coach biographies, recruiting questionnaire, alumni information, opportunity to donate, and news and events. The team roster link lists the name and picture of each athlete, the athlete's year in college, the position or event in which the athlete excels, hometown, records held, athletic achievements, and biographical data. Each team's webpage also provides links to team standings, records and schedule.

The University indicated that video content production is a vital component to the marketing and promotion of its intercollegiate athletic teams. The athletic department uploads video content for all 25 intercollegiate teams on the University's athletics website.

Gopher Digital Productions, comprised of 11 athletic department staff, produces video content for all sports. Additional video content is provided to the 11 teams that compete in venues with digital scoreboard displays (also called jumbotrons): football, volleyball, women's and men's ice hockey, wrestling, men's and women's basketball, women's and men's gymnastics, softball and baseball. For these 11 teams, the athletic department produces all video content, including animation and graphics for the more than 155 annual home competitions. Video content, which is displayed on the digital

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<sup>17</sup> <http://www.gophersports.com/>

scoreboard during competitions for these sports, includes a team introduction video, student athlete headshots, crowd prompts, and game-specific animations and graphics. Additional video content displayed on digital scoreboards is sport-specific. For example, a “puck-drop hype” video plays at men’s and women’s ice hockey games; a “run-out/kick-off video plays at football games; when applicable an Olympic spotlight video plays at the women’s ice hockey games; and a “tip-off hype” video plays at men’s and women’s basketball games. Gopher Digital Productions produces all on-demand content for the athletics website: [GopherSports.com](http://GopherSports.com), the Gopher’s official YouTube® channel, and other media outlets.

The table below lists all athletic publications and promotional material created by the University during the 2016-2017 academic year:

**Publication and Promotional Materials 2016-2017**

Team	Poster	Schedule Cards	Home Game Program	Media Guide	In-game Jumbotron	Marketing Plan	Comms. Plan
men’s baseball		X	X		X	X	X
softball		X	X		X	X	X
men’s basketball	X	X	X	X	X	X	X
women’s basketball	X	X	X	X	X	X	X
football	X	X	X	X	X	X	X
men’s cross country	X	X	X*			X	X
women’s cross country	X	X	X*			X	X
men’s golf			X*			X	X
women’s golf			X*			X	X
men’s gymnastics	X	X			X	X	X
women’s gymnastics	X	X	X		X	X	X
men’s ice hockey	X	X	X	X	X	X	X
women’s ice hockey	X	X	X		X	X	X
women’s rowing	X					X	X
women’s soccer	X	X	X			X	X
men’s swim & dive	X		X			X	X
women’s swim & dive	X		X			X	X
men’s tennis	X	X				X	X
women’s tennis	X	X				X	X
men’s track and field (i & o)	X	X				X	X
women’s track and field (i & o)	X	X				X	X
women’s volleyball	X	X	X		X	X	X
men’s wrestling	X	X	X		X	X	X

\* Tournament programs, not home game programs, produced for these sports.

*Access to other publicity resources for men's and women's programs*

The University indicated that a number of Minneapolis/St. Paul and national radio and television media companies carry University athletics. The University indicated that local radio and television stations may broadcast championship games of the University's football, men's and women's basketball, and men's and women's ice hockey games. National-level television stations which broadcast University athletic events include CBS Sports Network, ESPN Networks, Big Ten Network, and Fox Networks. The following Minneapolis/St. Paul television stations broadcast athletic events: WCCO, CBS Minnesota; KSTP, ABC; FOX 9, KMSP-TV; KARE 11, NBC; and FOX Sports North. Further, iHeartMedia Minneapolis owns the license to carry the University's football, men's and women's basketball, and men's ice hockey games on various iHeartMedia radio stations, local affiliates and on internet-streaming devices.

Additionally, the local radio stations air a weekly radio show featuring the coaches of the football team, the men's and women's basketball team and the men's ice hockey team. Each radio show runs during the competitive and championship season of each respective team.

In focus groups with OCR staff, student-athletes representing the following eight teams expressed concern with the publicity services provided to their team: baseball, softball, men's and women's golf, women's rowing, men's and women's swimming and diving, men's outdoor track and field. The baseball team indicated that the photographs of the players were not creative while the softball team complained that their Communications Lead has little experience in social media. The men's and women's golf teams expressed a desire for more videos to highlight their tournaments and member of both teams expressed a general desire for more publicity of their sport. The women's rowing team complained that they get minimal social media exposure and noted that their on-line biographies are incorrect. The men and women swimmers complained that the tweets for their meets are frequently are inaccurate, with incorrect times and events, that their on-line biographies are incorrect, and that they would like to have a "hype video" for their swim meets. The men's outdoor track and field team complained that many of their on-line biographies are incorrect, that the team's Twitter, Facebook and Instagram accounts are inaccurate and not up-to-date, and that the team poster was terrible because it did not have actual photographs of the team members, rather the athletes were drawn as animated figures. They noted that no other team poster had animated figures to represent team members.

*Conclusion - Publicity*

OCR reviewed information provided by the University and found that the athletic department provides publicity to men's and women's teams in a variety of media, including television, radio or web streaming coverage, social media (Twitter, Facebook, Instagram), game schedule cards, media guides, programs, posters and videos. The marketing plans and communications plans for all sports are similar in that they provide detailed information unique to each sport. The quality and quantity of the printed publicity material are similar. The game schedule cards are widely available and the team posters are prevalent throughout campus. Printed materials, such as media guides, programs, and schedule cards are durable and of high quality. All of the posters are printed on heavy, glossy stock. The programs for all sports contained similar information, such as pictures of the players, individual and team statistics, feature articles, and corresponding schedules.

During student focus groups, athletes on four men's and four women's teams complained about the quality and/or availability of the publicity services provided to their teams. Of particular note were complaints expressed by male and female swimmers, female rowers, and male outdoor track athletes: all stated that information in their on-line biographies was incorrect and that social media updates, particularly on Twitter, were inaccurate. Finally, the women's rowing team expressed their dissatisfaction with the dearth of social media highlighting team accomplishments and the men's outdoor track and field team expressed distaste with their team's poster, as it is the only poster among all of the University's teams that had drawn animated figures to represent athletes.

OCR did not identify disparities based on sex regarding the quality of social media, publications or other promotional devices provided to male and female athletes. Although athletes from eight teams expressed criticism of the publicity services for their teams, the disadvantages were equally distributed between men's and women's teams. Based on the foregoing, OCR determined that 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 publicity, as required by 34 C.F.R. § 106.41(c)(10).

#### **Support Services - 34. C.F.R. § 106.41(c).**

The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of support services: (1) the amount of administrative assistance provided to men's and women's programs; and (2) the amount of secretarial and clerical assistance provided to men's and women's programs. The complaint filed with OCR was silent on any issues or concerns related to the University's provision of support services.

#### *Administrative Assistance*

The University provides, through the office of the Athletic Director, the following administrative assistance to all teams through various sub offices. These offices assist team coaches in arranging services for students/athletes, travel, equipment and supplies, events for the public, statutory and regulatory compliance, and numerous other areas related to the functioning of the athletic team. These offices include:

- Business
- Communications
- Compliance
- Equipment
- Event Management
- Facilities
- Marketing
- Digital Productions
- Human Resources
- Academics

- Athletic Medicine and
- Ticketing Sales and Service.

All of the coaches surveyed by OCR stated that they were able to access the University's athletic support offices to assist with the administration of their programs. None stated to OCR that they have been denied access to these offices or to the services provided by them.

### *Clerical and Secretarial Support*

The office of the Athletic Director has two Deputy Athletic Directors, an Executive Associate Athletics Director/Senior Women's Administrator and multiple Senior Associate, Associate and Assistant Athletic Directors who support the aforementioned sub offices. The office of the Athletic Director provides clerical support to the sub offices as well as to nearly all of the teams. The men's and women's cross-country, golf, gymnastics, swimming and diving, tennis as well as track and field teams rely strictly on direct clerical support provided by the office of the Athletic Director. Four teams, baseball, men's and women's basketball and football, receive no direct clerical support from the office of the Athletic Director, but rather rely on their respective Director of Operations, Director or Assistant Director of Operations or Assistant to the Head Coach. The remaining teams (softball, men's and women's hockey, soccer, volleyball and wrestling) receive direct clerical support from the office of the Athletic Director and also have at least one additional staff member such as a Director of Operations, Assistant Program Director or Assistant). OCR found no significant difference between the clerical support provided to men's and women's teams.

With the exception of baseball, men's and women's gymnastics, men's hockey, football, and men's and women's swimming and diving, all athletic team offices are located in Bierman. Nearly all of the head coaches have their own office. The men's gymnastics head coach is the only head coach who shares an office. He shares an office with two assistant coaches. Nearly all assistant coaches have their own office except for wrestling, men's track, men's and women's cross-country, men's and women's gymnastics, and soccer. The University provides three teams – football and men's and women's basketball – with new office suites in the Basketball Development Center which is located in Bierman. The office suites feature a receptionist area, recruiting room, conference room and individual offices for the assistant coaches and head coach.

Coach surveys revealed no complaints regarding the availability of office space and equipment. Coaches for both men's and women's teams indicated that coaches and assistant coaches performed some clerical work with University clerical assistance in support of their teams. The time spent by coaches on clerical support varied by sport, but no difference was noted between men's and women's teams. Of the athletes surveyed and interviewed by OCR, none indicated that their sport failed to receive sufficient support services or that they were required to provide administrative support services.

### *Conclusion – 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. OCR noted differences between men's and women's teams in the size,

amenities and availability of office space, and the amount of administrative, secretarial or clerical assistance available, OCR found no indication that the differences affected the athletes on the team. The evidence revealed that the softball team had one more administrative support specialist than the men's baseball team and the men's basketball team had one more Assistant Director of Operations than the women's basketball team. This information, however, shows that the disadvantage at having one fewer clerical support employee was equally distributed between men's and women's teams.

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).

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

In her complaint, the Complainant indicated that during the 2013-2014 academic year, the University expended \$1.2 million in recruiting male athletes but only \$ 0.5 million in recruiting female athletes. The Complainant also claimed that in six of eight comparable sports, men's teams spent significantly more than its women's counterpart on recruitment travel from July to December 2012.

The Policy Interpretation lists three factors to be assessed in determining whether a recipient provides equal opportunities in the recruitment of student-athletes: (1) whether coaches or other professional athletic personnel in the 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 male and female athletic programs are equivalently adequate to meet the needs of each program; and (3) whether the differences in benefits, opportunities, and treatment afforded prospective student-athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

The "Policy for University of Minnesota Prospective Student-Athlete Official Visits" (Recruiting Policy) provides that hosting prospective student-athletes is an essential part of determining whether a prospect is a good fit for the institution. The Recruiting Policy states that the University will seek to recruit the very best student-athletes from Minnesota, nationally, and on a select basis, internationally. The Recruiting Policy describes an official campus visit, as follows:

- Meetings with academic advisors and members of the faculty
- Attending classes
- Getting to know members of the team and the coaching staff
- Tour of the campus and the Twin Cities
- Spending time in campus residence halls and dining facilities
- Attending University sporting events and team-specific practices
- Transportation provided by standard vehicles, such as those assigned to coaches

The Recruiting Policy prohibits the following activities during an official campus visit:

- Use of alcoholic beverages and illegal drugs
- Strippers in public venues or private parties

- Gambling or gaming activities
- Using sexual activity as a recruiting device
- Upgraded accommodations for the prospect and his/her parents
- Airfare other than commercial coach
- Scoreboards or signage to welcome a prospect or to simulate his/her participation on a team
- Locker room nameplates with prospect's name and number
- Athletic wear with prospect's name and number
- Any conduct that violates state or federal law

Before a prospect visits campus, a coach must send a copy of the Recruiting Policy to the prospect and to his or her parents or legal guardian. Additionally, the coaching staff must review the Recruiting Policy with any member of the team who will serve as a host to the prospect.

The table below depicts the recruiting budgets for each team during the 2016-2017 academic year, as of June 2017.

**Recruiting Budgets 2016-2017**

<b>Men's</b>	<b>Team</b>	<b>Women's</b>
\$33,125	baseball/softball	\$31,823
\$400,000	basketball	\$190,000
\$0	cross country <sup>18</sup>	\$0
\$736,200	football	n/a
\$27,248	golf	\$16,530
\$15,380	gymnastics	\$39,818
\$55,156	ice hockey	\$37,440
n/a	rowing	\$20,220
n/a	soccer	\$25,775
\$14,300	tennis	\$16,640
\$30,460	track & field (i) & (o)	\$48,450
n/a	volleyball	\$71,604
\$40,686	wrestling	n/a
<b>Total Budget</b>	<b>Total Recruiting Budget</b>	<b>Total Budget</b>
<b>\$1,397,911 (71.8%)</b>	<b>\$1,947,993</b>	<b>\$550,082 (28.2 %)</b>

As shown in the table above, the University budgeted \$1,947,993 for all recruiting during the 2016-2017 academic year, with \$1,397,911 or 71.8% of the budget allocated for men's teams and \$550,082 or 28.2 % allocated for women's teams. The difference in budget allocation between men's and women's teams represents a total of \$847,829 favoring men's teams.

<sup>18</sup> The recruiting budgets for the men's and women's cross country teams are contained within the corresponding track and field's team budgets.

*Recruiting Expenditures – 2016-2017*

The following table sets forth the actual expenditures, the unspent portion of the budgeted amount, and the percentage of budget spent on recruiting for each team during the 2016-2017 academic year, as of June 2017.

**Recruiting Expenditures 2016-2017**

Men			Team	Women		
Actual Expenditure	Remaining Balance	% of Budget Spent		Actual Expenditure	Remaining Balance	% of Budget Spent
\$22,952	\$10,173	69.3 %	baseball/softball	\$28,039	\$3,784	88.1 %
\$191,985	\$208,015	48 %	basketball	\$162,710	\$27,290	85.6 %
			cross country <sup>19</sup>			
\$742,090	- \$5,890	100.8 %	football	n/a		
\$17,184	\$10,064	63.1 %	golf	\$18,817	\$2,287	113.8 %
\$21,740	-\$6,360	141.4%	gymnastics	\$34,865	\$4,953	87.6 %
\$37,444	\$17,712	67.9 %	ice hockey	\$29,076	\$8,364	77.7 %
n/a			rowing	\$19,319	\$901	95.5 %
n/a			soccer	\$33,096	\$2,679	92.5 %
\$33,852	\$11,504	74.6 %	swim & dive	\$32,690	\$19,092	63.1 %
\$19,126	-\$4,826	133.7 %	tennis	\$11,232	\$5,408	67.5 %
\$26,888	3,572	88.3 %	t & f (i & o)	\$44,718	\$3,732	92.3 %
n/a			volleyball	\$58,874	\$12,730	82.2 %
\$35,726	\$4,960	87.8 %	wrestling	n/a		
Recruiting Expenditures			Total Recruiting Budget	Recruiting Expenditures		
<b>\$1,148,987</b>			<b>\$1,622,423</b>	<b>\$473,436</b>		

Actual funds spent on recruiting by both men’s and women’s teams during the 2016-2017 academic year came in lower than the overall budget by 8.3% at \$1,622,423, which represents 83.3% of the overall budget. Total recruiting expenditures resulted in a surplus of 16.7 % under budget, even though three men’s teams and one women’s team exceeded their recruiting budgets. Men’s teams spent \$1,148,987 or 59% of the overall recruiting budget, and 82.2 % of the recruiting budget allocated to men’s teams. Women’s teams spent \$473,436 or 24.3% of the overall recruiting budget, and 86.1% of the recruiting budget allocated to women’s teams. The difference in recruiting expenditures between men’s and women’s teams represents a total of \$674,551 favoring men’s teams. Coaches of the football, men’s

<sup>19</sup> The recruiting budgets for the men’s and women’s cross country teams are contained with the corresponding track and field’s team budgets.

gymnastics and men's tennis teams and the women's golf team reported no negative consequences for having exceeded their recruiting budgets during the 2016-2017 academic year.

*Opportunities to recruit*

The University's Athletics Department places no restrictions on recruitment, but all recruiting staff are bound by the recruiting rules of the NCAA that apply to their sports and by the University's Recruiting Policy. University counsel informed OCR that all coaches are certified by the NCAA to recruit nationally. There are no restrictions on the geographic area of recruitment. Coaches are permitted to recruit internationally with prior approval from their team's administrator. The athletic department does not maintain a detailed record of every recruiting trip taken by each recruiter, but does keep record of the number of recruiting trips taken every year.

Coaches reported that recruiting is a significant part of their jobs, and that one or two assistant coaches perform about half of the recruiting responsibilities. Coaches indicated they recruit prospects locally, nationally and occasionally internationally. Each head coach identifies sport-specific recruitment needs and submits a recruiting budget to reflect anticipated needs. Some sports are limited to a specific number of recruiting days. Men's and women's basketball, for example are limited to 100 recruiting days per year and other sports have a specific recruiting period, such as men's and women's swimming and diving.

Coaches of men's and women's teams reported that they recruit through social media, emails, and telephone contacts. Coaches also search for online statistics and view videos sent to them by athletes or coaches. They indicated that they travel to showcases and tournaments, and often personally meet the recruit and his or her family. All coaches reported that the University provides them with a cell phone, a Wi-Fi enabled computer, all of which they heavily rely upon for recruiting. All coaches indicated that their recruiting budget and physical resources (cell phone, computer, car) provided to them are sufficient to meet their recruiting needs and allow them to attract talented students who contribute to the success of their teams.

The following table depicts the average number of recruiting trips taken by head or assistant coaches during the 2016-2017 academic year, as reported by head coaches:

<b>Men</b>		<b>Women</b>
<b># of Trips</b>	<b>Team</b>	<b># of Trips</b>
30	baseball/softball	30
100	basketball	100
20	cross country	20
115	football	n/a
10	golf	10
34	gymnastics	40
56	ice hockey	50
n/a	rowing	24

**Coaches' Recruiting Trips 2016-2017 (continued)**

<b>Men</b>	<b>Team</b>	<b>Women</b>
<b># of Trips</b>		<b># of Trips</b>
n/a	soccer	15
40	swim & dive <sup>20</sup>	40
10	tennis	10
30	track & field (i) & (o)	30
n/a	volleyball	50
15	wrestling	n/a
<b>460</b>	<b>Total</b>	<b>419</b>

In total, coaches of men's teams took 460 recruiting trips and coaches of women's teams took 419 trips. The number of recruiting trips taken by coaches of men's team, excluding those taken by football coaches, was 345. In seven of the nine comparable sports (where the University sponsors a men's and women's team in the same sport),<sup>21</sup> the number of recruiting trips taken by coaches were identical. The coaches of the men's ice hockey team took 6 more trips than the coaches of the women's ice hockey team and the coaches of the women's gymnastics team took six more trips than the coaches of the men's gymnastics team.

*Other resources available for recruitment*

The University provides courtesy cars to several head and assistant coaches. The cars are used by the coaches year-round and the University does not restrict their use. The coaches use the courtesy car for recruiting trips that are within driving distance. The assignment of courtesy cars is as follows:

The athletic program distributed a total of 50 courtesy cars to its coaching staff. During the 2016-2017 academic year, the men's athletic program received a total of 30 courtesy cars for coaching staff and the women's athletic program received 20 courtesy cars. The discrepancy in the number of courtesy cars provided to coaching staff may largely be attributed to the football team, which had a total of 10 courtesy cars for the year. The University explained that the high number of courtesy cars given to the football team is based on the number of NCAA-allowed assistant coaches (nine assistants allowed during the 2016-2017 academic year), all of whom are called upon to perform recruitment.

*Benefits, opportunities, and treatment afforded prospective student-athletes*

According to the University, the NCAA establishes the maximum number of athletic scholarships it is allowed to award to students on each of its 25 teams. Coaches explained that they are allowed to split the

<sup>20</sup> The coaches of the swimming and diving teams coach both the male and female swimmers and divers.

<sup>21</sup> The nine comparable sports are baseball/softball, basketball, cross country, golf, gymnastics, ice hockey, swimming and diving, tennis, and indoor and outdoor track and field.

scholarships in any manner they choose. For example, a coach may award two student-athletes each half of a full scholarship. Coaches also stated that NCAA rules and the University allow them to offer a variety of scholarships. Coaches indicated that some student-athletes are awarded a full athletic scholarship, which covers the cost of attendance (tuition, housing, books and fees), while other student-athletes are awarded a scholarship which covers only tuition, and still others may receive a scholarship that pays for half of University tuition.

All of the coaches reported that recruits who are likely to attend the University are provided one official visit to campus. On an official visit, the University pays for the student's transportation to and from the University, lodging, meals, and entertainment. Coaches indicated that students who commit to attend the University usually make one or two additional visits to the University, which are unofficial and must be paid for by the student.

None of the coaches from men's or women's teams expressed concerns with their recruiting opportunities, recruiting budget, or recruiting benefits (electronic devices, cars, mailings). The coach of the women's golf team, however, lamented that "recruiting is 24 hours a day, 7 days a week."

Most of the student-athletes interviewed by OCR indicated they made one official recruiting visit prior to committing to attend the University. Some of the athletes indicated they made one official visit and one or two unofficial visits, as well. The athletes who made unofficial visits in addition to an official visit lived in Minnesota or a neighboring state, and indicated that their proximity to the University allowed them to make additional visits at their own expense. All the athletes indicated that their recruiting visits included meeting with coaches, socializing with athletes, observing practices, touring campus, meeting with an academic advisor, spending the night in a hotel or with a student athlete, and eating at local eateries or on-campus dining halls. Some student-athletes said they attended a University football game.

The following table sets forth the number of official visits made by prospective athletes during the 2016 – 2017 academic year:

**Official Recruiting Visits 2016-2017**

<b>Men</b>		<b>Women</b>
# of Visits	<b>Team</b>	# of Visits
9	baseball/softball	10
5	basketball	12
	cross country <sup>1</sup>	
52	football	n/a
4	golf	4
14	gymnastics	6
3	ice hockey	6
n/a	rowing	22
n/a	soccer	8

**Official Recruiting Visits 2016-2017 (continued)**

<b>Men</b>		<b>Women</b>
# of Visits	<b>Team</b>	# of Visits
24	swim & dive	22
5	Tennis	5
35	track & field (i) & (o)	36
n/a	volleyball	5
17	wrestling	n/a
<b>168</b>	<b>Total</b>	<b>136</b>

The table shows that during the 2016-2017 academic year, male athletes made a total of 168 official visits and female athletes made a total of 136 official visits. The difference in official visits made by male and female recruits represents a total of 32 visits favoring male athletes.

Conclusion – Recruitment

OCR first examined whether coaches of men’s and women’s teams were provided with substantially equal opportunities to recruit. The University reported, and all coaches verified, that they are allowed to recruit locally, nationally and, with approval, internationally. None of the coaches indicated that the University limits or restricts their recruiting efforts. During the 2016-2017 academic year, the number of recruiting trips taken by coaches of seven of the nine comparable sports were identical. The number of trips taken by the men’s ice hockey coach exceeded those taken by the women’s ice hockey coach by six, and the number of trips taken by the women’s gymnastics coach exceeded those taken by the men’s gymnastics coach exceeded those by six. Based on this information, OCR concludes that coaches of men’s and women’s athletic teams are provided with substantially equal opportunities to recruit.

OCR next examined the financial and other resources provided to the men’s and women’s athletic programs. All coaches reported having access to a cell phone, a computer, and transportation, upon which they relied for recruiting trips. During the 2016-2017 academic year, men’s teams spent 59 % (\$1,148,987) of the overall recruiting budget while women’s teams spent 24.3% (\$472,436) of the overall recruiting budget.

The Title IX regulation states, “Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams . . . will not constitute noncompliance with this section, but [OCR] may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.”<sup>22</sup>

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<sup>22</sup> 34 C.F.R. §106.41(c)

Although the recruiting dollars spent by men's teams far exceeded the recruiting dollars spent by women's teams, neither the men's athletic program nor the women's athletic program exceeded their recruiting budget. That is, the men's teams spent 82.2% of their recruiting budget and women's teams spent 86.1% of their recruiting budget. All of the coaches indicated that the financial and physical resources available to them for recruiting were sufficient to enable them to recruit the athletes they need to build successful teams. The information gathered by OCR established that the University provided women's teams the funds necessary to recruit talented student-athletes who contribute to the success of the women's athletic program. Accordingly, OCR concludes that the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program.

And finally, OCR considered whether there were differences in benefits, opportunities, and treatment provided to male and female recruits, and if so, whether the differences had a disproportionately limiting effect upon the recruitment of students of either sex. Student-athletes' descriptions of their recruiting visits were uniformly similar. Nearly all the athletes with whom OCR spoke were recruited and all stated that their visits included meetings with coaches, spending time with athletes, observing practices, touring campus, meeting with an academic advisor, free meals, and spending the night in a hotel, in a residence hall, or in an athlete's apartment. Most of the athletes reported that they made one official visit, which was paid for by the University. Some of the athletes who live near Minneapolis, said that they had occasion to make one or two unofficial visits, for which they paid. In summary, OCR found no differences in the benefits, opportunities or treatment afforded to prospective male and female student-athletes.

For the reasons stated above, OCR concludes that the evidence is insufficient to establish that the University discriminates against female student-athletes in its student athlete recruiting opportunities, as required by 34 C.F.R. § 106.41(c).

### **Resolution Agreement Monitoring**

OCR will monitor the University's implementation of the Agreement. Please note that the first monitoring deadline is **October 31, 2018**.

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

Please be advised that the District may not harass, coerce, intimidate or discriminate against any individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

OCR wishes to thank Brent Benrud, Senior Associate General Counsel, for his assistance and cooperation during OCR's investigation. If you have questions about this letter, you may contact Jason Frazer, Senior Attorney, at 312-730-1653 or [jason.frazer@ed.gov](mailto:jason.frazer@ed.gov).

Sincerely,

Ann Cook-Graver  
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