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January 21, 2021

Sent via email to: Michael Berndt at Michael.Berndt@dctc.edu

Michael Berndt
President
Dakota County Technical College
1300 145th Street E.
Rosemount, MN 55068

Re: OCR # 05-15-2391
Dakota County Technical College

Dear Mr. Berndt:

This is to advise you of the resolution of the above-referenced complaint filed with OCR against Dakota County Technical College (College) alleging discrimination on the basis of sex.¹ Specifically, the complaint alleged:

1. The College fails to provide notice of the name, office address, and telephone number of the employee designated as its Title IX Coordinator.
2. The College discriminates against female students on the basis of sex by failing to provide female students with intercollegiate athletic opportunities equal to male students in the provision of equivalent locker rooms, practice and competitive facilities.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.² As a recipient of Federal financial assistance from the Department, the College is subject to Title IX.

During the pendency of OCR's investigation, the College requested to voluntarily resolve this complaint. The College submitted the enclosed Resolution Agreement (Agreement) on January

¹ OCR's notification letters dated July 1, 2015, to the Complainant and the College indicated that the scope of OCR's investigation would include the additional 10 component areas set forth in Title IX at 106.41(c). By letter dated February 26, 2020, OCR notified the College and the Complainant that the scope of OCR's investigation would narrow to the provision of locker rooms, practice and competitive facilities.

² An amended Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, the Title IX regulation in effect at the time of the underlying events associated with the above-referenced complaint serves as the basis for OCR's determination in this matter, which is available [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

20, 2021, in which the College agrees to comply with Title IX in regard to providing equal opportunities with regards to locker rooms and practice and competitive facilities to its athletes. A summary of OCR's investigation to date and the identified concerns are described below.

Background

The College is located in Rosemount, Minnesota, and enrolls approximately 3,000 students. It is one of 30 colleges and 7 universities in the Minnesota State Colleges and Universities System. The College is a member of the National Junior College Athletic Association, Division II. During the 2015-2016 academic year and continuing through the 2019-2020 academic year, the College has offered three women's sports and three men's sports: women's soccer, softball, women's volleyball, men's soccer, men's basketball, and baseball.

The College announced that it has postponed its fall 2020 athletics season (men's and women's soccer and women's volleyball) until spring 2021 due to restrictions resulting from the Covid-19 pandemic.³ Winter sports competition (men's basketball) will begin in January 2021.⁴ The College continues to review a range of modifications and adapted protocols for the spring 2021 intercollegiate athletics season (softball, baseball, and the fall 2020 sports moved to spring 2021).⁵

The College established its athletics program in 2003, when the women's soccer team played its inaugural season. Baseball and men's soccer commenced in 2004. Softball became a competitive sport in 2006. The men's basketball team and women's volleyball team began competing in 2011.

The athletic facilities for the soccer, baseball, and softball teams are located on the College's main campus. In 2016, the men's basketball and women's volleyball teams began using newly constructed facilities located at Inver Hills Community College, which is approximately 10 miles from campus.

The chart below shows the number of athletic participation opportunities at the College during the 2019-2020 academic year:

Athletic Participation Opportunities 2019-2020 Academic Year		
Male	73	63 %
Female	42	37 %
Total Athletic Participation	115	

³ <https://www.dctc.edu/DCTC/assets/File/pdf/about-us/newsroom/PR-2020-07-13-Postponed-Fall-Athletics.pdf>

⁴ <https://www.goblueknights.com/general/2020-21/releases/20200714gfm2xv>

⁵ Ibid.

Legal Standards

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this requirement.

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.” The Title IX regulation, at 34 C.F.R. §106.41(c)(7), requires a recipient to provide equal athletic opportunities for members of both sexes in the provision of locker rooms and practice and competitive facilities.

OCR’s *Intercollegiate Athletics Policy Interpretation*⁶ (Policy Interpretation) requires OCR to use an overall approach when investigating intercollegiate athletics programs. OCR uses an equivalency standard in assessing compliance with the athletics provisions of Title IX. Under an equivalency standard, identical benefits, opportunities, or treatment are not required as long as the effect of any differences in the overall athletics program are negligible. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the College could still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors, such as the unique aspects of particular sports or athletic activities. OCR considers whether the College’s policies are discriminatory in language or effect, whether disparities in individual program areas are substantial enough in and of themselves to deny equality of athletic opportunity, or whether disparities of a substantial and unjustified nature exist in the College’s athletics program as a whole.

For the provision of locker rooms and practice and competitive facilities, OCR examines the factors relating to the benefits, opportunities or treatment of male and female athletes. Once each factor has been analyzed, then OCR makes a determination for that program component. OCR considers whether the same or similar benefits, opportunities or treatment are provided for all students, or, if not, whether the differences have a negative effect on one sex that results in a disparity. When disparities are identified between the men’s and the women’s teams, e.g., if a men’s team received a superior benefit in some way, OCR considers whether the benefit provided to the men’s program was offset by an unmatched benefit to any of the teams in the women’s program. In making this program-wide comparison, and before OCR concludes that a benefit to one of the teams in the women’s program offsets a benefit provided to one of the teams in the men’s program, OCR considers whether the offsetting benefits were equivalent or equal in

⁶ The Policy Interpretation is available at <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>.

effect. OCR only finds the benefit offsetting if it had the same or a similar effect on the student athlete(s) or team within this program component.

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

Allegation 1 – Factual Summary

The Complainant alleged that the College fails to provide notice of the name, office address, and telephone number of the employee designated as its Title IX Coordinator.

Pursuant to Section 108(c) of OCR's Case Processing Manual, OCR will dismiss an allegation when based on all of the facts/information provided by the complainant or publicly available information OCR cannot reasonably conclude that the recipient has violated a law OCR enforces. OCR verified that the College has designated and authorized an employee to coordinate its responsibilities to comply with Title IX, who is referred to as the Title IX Coordinator. OCR confirmed that the College's website identifies the Title IX Coordinator by name, title, office address, email address and telephone number.⁷ Accordingly, based on the publicly available information, OCR has dismissed Allegation 1 effective the date of this letter.

Allegation 2 – Factual Summary

The Complainant alleged that the College discriminates against female students on the basis of sex by failing to provide female students with intercollegiate athletic opportunities equal to male students in the provision of equivalent locker rooms, practice and competitive facilities. Specifically, the Complainant indicated that the College provides a new baseball facility for the men while providing a substandard softball facility for the women. He also alleged that the College provides locker rooms only for male athletes.

OCR initiated its investigation during the 2015-2016 academic year. OCR reviewed data provided by the College and conducted an on-site visit to the College in October 2015, April 2017, and September 2019. In October 2015, OCR inspected the College's facilities, including athletic locker rooms, and practice and competitive facilities. OCR also interviewed student

⁷ <https://www.dctc.edu/support-services/sexual-violence/> (Last viewed on January 8, 2021.)

athletes, athletic administrators, and coaches. In September 2019, OCR visited the College to inspect the improvements that were made to the softball facility in 2018.

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.

The chart below shows the practice facility, competitive facility, and locker room for each team as of the 2019-2020 academic year:

Team	Practice Facility	Competition Facility	Locker Room	Number of Athletes 2019-2020
Softball	UMore - Rosemount Ball Fields	UMore - Rosemount Ball Fields	N/A	13
Baseball	Ames Baseball Field	Ames Baseball Field	N/A	34
Men's Basketball	Inver Hills	Inver Hills	Inver Hills	15
Women's Volleyball	Inver Hills	Inver Hills	Inver Hills	13
Men's Soccer	Ames Soccer Complex	Ames Soccer Complex	N/A	24
Women's Soccer	Ames Soccer Complex	Ames Soccer Complex	N/A	16

Quality, Availability and Exclusivity of Practice and Competitive Facilities
Maintenance and Preparation of Practice and Competitive Facilities

All of the College's intercollegiate athletic teams practice in the same facility in which their competitions are held, but, as subsequently described, the baseball and softball teams also both make use of a common indoor hitting facility. Each team's practice and competitive facilities are discussed below. Athletes in all sports except softball expressed no concerns about the quality, availability, and exclusivity and maintenance of their practice and competitive facilities. Coaches and athletes in all sports indicated that the coaches and athletes themselves are responsible for the preparation of facilities for practice and competitive events.

Softball

In 2015, during OCR's initial visit to the College, the softball players reported that they practice and compete on two softball fields located at the UMore - Rosemount Ball Fields. They stated that the fields are of poor quality. The players reported that the fields were not well maintained and were not used exclusively by the College softball team. They indicated that the maintenance performed by the City of Rosemount was spotty and the fields were used by non-College softball players from the surrounding area, but that the fields are available to them for games and practices. In 2015, the softball athletes complained that the UMore – Rosemount Ball Fields did not include enclosed dugouts, permanent restrooms, and a concession stand.

In 2015, during OCR's inspection of the UMore - Rosemount Ball Fields, OCR observed two fields for use by the women's softball team and by local baseball and softball teams. OCR's inspection confirmed the athletes' reports about the absence of enclosed dugouts, restrooms, and a concession stand. OCR also observed that the UMore – Rosemount Ball Fields lacked a press box and lights for evening play. OCR's inspection confirmed that the competitive and practice fields are of regulation size and designed specifically for the sport.

During the pendency of OCR's investigation, from August 2018 through October 2018, the College and the City of Rosemount jointly made several improvements to the UMore - Rosemount Ball Fields.⁸ The College held a ceremony in May 2019 to celebrate the completion of several improvements, including new enclosed dugouts.⁹ OCR's inspection of the site in September 2019 confirmed that the women's competitive softball field located at U-More – Rosemount Ball Fields has bleachers for 50 spectators, enclosed dugouts, a scoreboard, and two portable toilets. The competitive field is not lighted and does not have a press box, permanent restrooms, or a permanent concession stand.

In August 2020, the Softball Coach reported to OCR that the quality of the UMore - Rosemount Ball Fields was excellent as a result of the improvements. He indicated that the improved 50-person bleacher seating is sufficient for spectators at softball games. In September 2019, OCR visited the UMore – Rosemount Ball Fields and observed that the renovated competition field used by the College team is of excellent quality. The Softball Coach noted that additional improvements are planned, including the construction of two more softball fields for exclusive use by the College softball team, a permanent concession stand, and permanent restrooms. Contrary to the Coach's report, the College's website states only that a playground and additional fields will be added to the UMore – Rosemount Ball Fields. It does not indicate whether use of the fields will be limited to the College softball team and it does not mention the addition of a permanent concession stand and permanent restrooms.

⁸ <https://www.flickr.com/photos/dctc/albums/72157708825455582/page1>

⁹ <https://blogs.dctc.edu/dctc-news/2019/05/29/blue-knights-softball-welcomes-new-dugouts/>

Baseball

The baseball team practices and competes at Ames Field,¹⁰ which is adjacent to the College and has exclusive use of the facility. The Field, which opened in 2012, includes enclosed dugouts, a scoreboard, press box, bleacher seating for 200, permanent concession stand, and permanent restrooms; the field is not lighted. The baseball field, which the baseball players use for practices and competitions, is regulation size and designed specifically for the sport. The baseball athletes rated Ames Field as excellent.

OCR's inspection confirmed that the quality of Ames Field is excellent and confirmed the existence of enclosed dugouts, a scoreboard, press box, bleacher seating for 200, permanent concession stand, and permanent restrooms. Baseball athletes and the Baseball Coach reported that Ames Field is available to the men's baseball team when needed and that it is used exclusively by the team, though the College states the field is sometimes rented out for local club use.¹¹ The field is of regulation size and designed specifically for the sport.

The softball team and baseball team use the Hitting Facility for indoor practice. The Hitting Facility¹² is adjacent to Ames Field. The College's website lists the following amenities at the Hitting Facility:

- 3 Batting Cages
- 3 Pitching Machines
- 3 Portable Mounds
- 2 Nine Pocket Pitching Targets
- Driveline Wall
- Arm Care Band Hooks
- Team Lockers

The College provided OCR with a copy of the softball and baseball teams' 2019-2020 schedule for the Hitting Facility. The schedule shows the softball and baseball teams were allowed equal time at the Hitting Facility. In August 2020, the Softball Coach confirmed that the schedule is similar for the 2020-2021 academic year. Both the softball players and baseball players indicated that the Hitting Facility is available to them in accordance with the schedule and that they have exclusive use of the facility when they are scheduled to use it.

¹⁰ <https://www.goblueknights.com/facilities/ames-baseball-field>

¹¹ The College did not provide documentation to support this assertion.

¹² <http://www.goblueknights.com/facilities/Hitting-Facility>

Men's Basketball and Women's Volleyball

The men's basketball and women's volleyball teams practice and compete at the Inver Hills Community College athletics facility (Facility). Each team has access to two courts – one for practice and one for competition. The basketball and volleyball teams do not have exclusive use of the facility, as both teams must share the facility with Inver Hills Community College students. However, the courts are always available to the teams when needed for practices or competitions. The competition courts each provide bleacher seating for 325 spectators. The Facility also provides a concession stand and press box, which are available to both the men's basketball and women's volleyball teams during games. The volleyball and basketball athletes reported that the quality of the Facility is excellent. OCR's inspection of the facility confirmed their report.

Men's and Women's Soccer

The men's and women's soccer teams share the Ames Soccer Complex,¹³ which is located adjacent to the College. The Ames Soccer Complex has three full-sized soccer fields shared equally by the men's and women's teams: two fields for practice and one competition field. The competition field has a press box, ticket booth, concession area, lights, bleacher seating for 1,000 spectators, and a press box. The fields are maintained in excellent condition by the City of Rosemount. The men's and women's teams do not have exclusive use of the fields, as the three fields can be converted into six fields for use by youth soccer teams. The male and female soccer players rated the Ames Complex as excellent and they indicated that it is available to them for practices and games without conflict. OCR visited the Ames Complex and observed that the facility is of excellent quality.

Practice and Competitive Facilities Summary

Although none of the teams except baseball have exclusive use of their practice or competitive facility, none of the athletes or coaches reported issues regarding sharing the facility with other students or the community. None of the teams reported any issues with the availability of their competitive or practice facilities. OCR therefore determined there is no disparity regarding the exclusivity or availability of use of practice and competitive facilities. Additionally, none of the athletes or coaches reported a problem with the maintenance or preparation of their practice and competitive facilities.

OCR notes a disparity between the amenities provided to the baseball team at Ames Field and those provided to the softball team at the UMore - Rosemount Ball Fields. Specifically, softball players do not have a press box, permanent restrooms, and a permanent concession stand at the UMore - Rosemount Ball Fields while baseball players enjoy the advantages of a press box,

¹³ <http://www.goblueknights.com/facilities/ames-soccer-complex>

permanent restrooms, and a permanent concession stand at Ames Field. Based on the number of rostered female and male athletes during the 2019-2020 academic year, OCR determined that the 13 softball players affected by this adversity represent 31% of the College's female athletes while none of the male athletes are adversely affected by a lack of amenities.

Locker Rooms

Availability and Quality of Locker Rooms

Softball and Baseball

Although not referred to as a locker room, softball and baseball athletes share 15 team lockers that are located in the Hitting Facility. The team lockers, also called cubbies, are good quality, are composed of wood, and do not have doors and cannot be locked; they are used by the athletes during hitting practice to store personal items. The athletes dress for hitting practice before they arrive and undress after they leave the facility. The baseball athletes told OCR the cubbies are small but did not comment on their quality; the softball athletes did not comment on the size or quality of the cubbies. Neither female nor male athletes indicated that the cubbies are unavailable when they want to use them.

Men's Basketball and Women's Volleyball

The men's basketball and women's volleyball teams each have access to a locker room before and after practices and competitions. Both locker rooms are identical in that they have the same number of lockers, showers, sinks, mirrors and bathroom stalls, the same number and positioning of benches. The athletes reported, and OCR confirmed that the basketball and volleyball locker rooms are of excellent quality and available to the athletes when needed.

Men's and Women's Soccer

Although not referred to as a locker room, the male and female soccer athletes share an area in the press box building (adjacent to the soccer fields) that has 15 wooden cabinets with no doors, also called cubbies. The cubbies cannot be locked and are used, sometimes simultaneously, for storage of personal items by male and female soccer athletes. Approximately the same number of male and female athletes indicated that sometimes they do not have access to a cubby when desired. The athletes dress for play before they arrive and undress after they leave the locker room. The male and female soccer athletes reported that the cubbies and room are of poor quality.

Locker Room Summary

OCR's investigation confirmed that only men's basketball and women's volleyball have access to a locker room. These athletes reported that the locker rooms are of excellent quality and available to them when needed. The remaining College teams, softball, baseball, men's soccer and women's soccer, have access to a quasi-locker room where they can store belongings in unlocked cubbies. Men's and women's soccer players share the same quasi-locker room while baseball and softball players share the same quasi-locker room. Twenty-nine (29) of the female athletes (69 % of all female athletes), and 58 of the male athletes (79 % of all male athletes) are disproportionately affected by the small cubbies in quasi-locker rooms. Accordingly, OCR found that male athletes are disproportionately affected by the College's provision of poor-quality locker rooms.

Conclusion - Facilities

At this point, OCR's investigation has revealed that female athletes, particularly softball players, do not enjoy practice and competitive facilities equal to that of male athletes, particularly baseball players. Disparities in the quality of practice and competition facilities appear to favor men over women, as no (0%) male athletes and 31% of female athletes are disproportionately affected by the College's provision of practice and competitive facilities – a disparity favoring men by 31%. OCR's investigation found that 79% of male athletes and 69% of female athletes are disproportionately affected by inadequate locker room space – a disparity favoring women by 10%.

Prior to the conclusion of OCR's investigation, and before OCR could conclude whether the disparities in the provision of practice and competitive facilities could be explained by legitimate nondiscriminatory factors, the College requested to resolve this component of its athletic program. The College submitted the enclosed Agreement on January 20, 2021 that compels the College to correct the deficiencies in its provision of practice and competitive facilities.

Resolution Agreement Monitoring

OCR will monitor the College's implementation of the Agreement. Please note that the first monitoring deadline is March 25, 2021.

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 College 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.

President Berndt
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January 21, 2021
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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.

This complaint is closed effective the date of this letter. If you have any questions or concerns please contact me at 312-730-1571 or ann.cook-graver@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure

cc: Kevin Finnerty
Assistant Attorney General
Office of the Minnesota State Attorney General
kevin.finnerty@ag.state.mn.us