



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

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January 10, 2018

Mr. Bruce Harreld  
President  
University of Iowa  
101 Jessup Hall  
Iowa City, Iowa 52242-1316

Re: OCR #05-15-2538

Dear President Harreld:

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 Iowa (University) alleging discrimination on the basis of sex.

The complaint alleged that the University discriminates against women in the University's intercollegiate athletic program on the basis of sex. Specifically, the complaint alleged that the University fails to provide equal athletic opportunities to men and women in the:

1. accommodation of athletic interests and abilities;
2. provision of athletic financial assistance;
3. provision and maintenance of equipment and supplies;
4. scheduling of games and practice times;
5. provision of travel and per diem expenses;
6. opportunity to receive coaching and the assignment and compensation of coaches;
7. opportunity to receive tutors and assignment and compensation of tutors;
8. provision of locker rooms and practice and competitive facilities;
9. provision of medical and training services and facilities;
10. provision of housing and dining services and facilities;
11. provision of publicity;
12. recruitment of student athletes; and
13. provision of support services.

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

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

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

Based on its investigation, OCR found insufficient evidence of a violation of Title IX regarding the University's scheduling of games and practice time and provision of travel and per diem, coaching, medical and training services and facilities, publicity, and support services. As to the other component areas, the accommodation of athletic interests and abilities and the provision of athletic financial assistance, equipment and supplies, tutoring, locker rooms and practice and competitive facilities, housing and dining, and recruitment, OCR has not made a finding under Title IX. Instead, the University submitted the enclosed Resolution Agreement (Agreement) on December 29, 2017, 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.

### **Background**

In the 2015-16 academic year, the University's full-time undergraduate student enrollment was 23,357 students, with 11,207 male students (48.0%) and 12,130 female students (51.9%).<sup>1</sup> In subsequent years, student population has increased overall, with a slight increase each year in the percentage of female students and a slight reduction in the percentage of male students. In fall 2016, the University reported a full-time undergraduate student enrollment of 24,476 students, with 11,578 males (47.3%) and 12,852 females (52.5%).<sup>2</sup> In fall 2017, the University reported a full-time undergraduate student enrollment of 24,503 students, with 11,512 males (47.0%) and 12,942 females (52.8%).<sup>3</sup>

In 2015-16, 2016-17 and 2017-18, the University offered the following 11 intercollegiate men's sports: baseball, basketball, cross country, football, golf, gymnastics, tennis, track and field (indoor and outdoor), swimming and diving, and wrestling. During the same period, the University offered the following 13 intercollegiate women's sports: basketball, cross country, field hockey, golf, gymnastics, rowing, soccer, softball, swimming and diving, tennis, track and field (indoor and outdoor), and volleyball. The University is a member of the National Collegiate Athletic Association (NCAA) and its teams compete at the NCAA Division I level. The University joined the Big Ten Conference in 1899.

### **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

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<sup>1</sup> [https://registrar.uiowa.edu/sites/registrar.uiowa.edu/files/wysiwyg\\_uploads/fall\\_profile\\_1.pdf](https://registrar.uiowa.edu/sites/registrar.uiowa.edu/files/wysiwyg_uploads/fall_profile_1.pdf) (20 students did not report their gender.)

<sup>2</sup> [https://ir.uiowa.edu/cgi/viewcontent.cgi?article=1105&context=registrar\\_profiles](https://ir.uiowa.edu/cgi/viewcontent.cgi?article=1105&context=registrar_profiles) (46 students did not report their gender.)

<sup>3</sup> [https://registrar.uiowa.edu/sites/registrar.uiowa.edu/files/wysiwyg\\_uploads/fallprofile\\_20173.pdf](https://registrar.uiowa.edu/sites/registrar.uiowa.edu/files/wysiwyg_uploads/fallprofile_20173.pdf) (49 students did not report their gender.)

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.”

The Title IX regulation, at 34 C.F.R. §106.41(c), states, “A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes.”

Accordingly, consistent with the regulations and the Intercollegiate Athletic Policy Interpretation<sup>4</sup> (Policy Interpretation) issued December 11, 1979 (44 *Fed. Reg.* 71413 *et seq.* (1979)), OCR investigated whether the University provides male and female students equal opportunities to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with the regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1) and whether the University provides its athletes opportunities for financial assistance in proportion to the number of students of each sex participating in intercollegiate athletics, in accordance with the Title IX regulation, at 34 C.F.R. § 106.37(c). Further, OCR investigated whether the University provides equal athletic opportunities for members of both sexes in the provision of equipment and supplies (34 C.F.R. §106.41(c)(2)); scheduling of games and practice times (34 C.F.R. §106.41(c)(3)); travel and per diem allowances (34 C.F.R. § 106.41(c)(4)); opportunity to receive academic tutoring and assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); provision of locker rooms and practice and competitive facilities (34 C.F.R. §106.41(c)(7)); provision of medical and training facilities and services (34 C.F.R. § 106.41(c)(8)); provision of housing and dining facilities and services (34 C.F.R. § 106.41(c)(9)); provision of publicity (34 C.F.R. § 106.41(c)(10)); provision of support services (34 C.F.R. § 106.41(c)); and recruitment of student-athletes (34 C.F.R. § 106.41(c)).

## **Facts and Analysis**

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

OCR examined whether the University provides male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1). OCR also considered whether the selection of sports and levels of competition at the University effectively accommodate the interests and abilities of both sexes.

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<sup>4</sup><http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>

*Participation Opportunities*

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

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

If an institution meets any one part of the Three-Part Test, then OCR will determine that the institution provides each sex with equitable opportunities to participate. Each part of the Three-Part Test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. If an institution meets any part of the Three-Part Test, OCR will determine that the institution is meeting this requirement.

*Part One: Substantially Proportionate Participation Opportunities*

Under Part One of the Three-Part Test, where an institution provides intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes. To establish the number of intercollegiate athletic participation opportunities offered at the University, OCR examined the athletic team rosters and confirmed athletic participation<sup>5</sup> with coaches.

In 2015-16, the University’s full-time undergraduate enrollment and athletic participation rates were as listed in the table on the following page.

**Athletic Participation & Undergraduate Enrollment 2015-16**

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<sup>5</sup>In accordance with the Policy Interpretation as clarified in 1996, OCR defined a participant as those who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and who are listed on the eligibility or squad lists maintained for each sport, or who, because of injury, cannot meet the criteria above, but continue to receive financial aid on the basis of athletic ability.

Gender	Athletic Participation Opportunities		Full-time Undergraduate Enrollment	
Men	463	50.9%	11,207	48.0%
Women	447	49.1%	12,130	52.0%
<b>Total</b>	<b>910</b>		<b>23,337<sup>6</sup></b>	

The disparity between the enrollment rate of women (52%) and their intercollegiate athletic participation rate (49.1%) represented as many as 54 additional female participation opportunities that would have been necessary to add to achieve proportionality, without cutting any athletic opportunities for men.<sup>7</sup>

However, OCR requires substantial proportionality between the participation and enrollment rates, not exact proportionality. OCR would consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team; i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As a frame of reference for determining the size of a viable team, OCR considers the average size of teams offered for the underrepresented sex at an institution. To that end, OCR also examined the participation rates on a team-by-team basis:

**Athletic Participants 2015-16<sup>8</sup>**

# Men	Sport	# Women
35	baseball/softball	23
18	basketball	28
34	cross country	22
10	golf	9
11	tennis	10
65	indoor track & field	52
68	outdoor track & field	52
38	swimming and diving	31
21	gymnastics	23
123	football	N/A
40	wrestling	N/A
N/A	rowing	120
N/A	field hockey	20
N/A	soccer	38
N/A	volleyball	19
<b>463</b>	<b>Total</b>	<b>447</b>

<sup>6</sup> As noted above, 20 students did not report their gender.

<sup>7</sup>In 2014-15, the disparity between the enrollment rate of women (51.7%) and their intercollegiate athletic participation rate (51.5%) was only 0.2 percentage points, which represented as many as 5 additional female participation opportunities that would have been necessary to add to achieve proportionality.

<sup>8</sup>OCR observed that from 2014-15 to 2015-16, the size of the men’s program grew by 48 athletes. Meanwhile, the size of the women’s program grew by only 7 athletes.

The average team size for women in 2015-16 was 34 athletes. Thus, in 2015-16, the size of the disparity (54) was greater than the average size of women's teams (34), and OCR could not conclude based on this information that in 2015-16, the University provided intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their enrollments. Therefore, OCR considered whether the University could show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex, in this case females.

*Part Two: History and Continuing Practice of Program Expansion*

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

OCR considers the following factors, among others, as evidence indicating an institution's history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- A record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- A record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex; and
- An affirmative response to requests by students or others for addition or elevation of sports.

OCR also considers the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- The current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students; and
- The current implementation of a plan of program expansion that is responsive to developing interests and abilities.

The University provided OCR with information identifying the inception dates of all of its women's athletics teams and historical information about expansion of its program for women. The information provided indicates in 1972-73, the University added 12 sports for women: badminton, basketball, bowling, cross country, field hockey, golf, gymnastics, softball, tennis, track and field, swimming and diving, and volleyball. Additionally, the University added a women's rowing team in 1994-95, and a women's soccer team in 1997-98.

However, the University also provided information showing that that from 1973-75, the University eliminated badminton, with 15 - 18 participants. The University claimed that it was

eliminated because the head coach left the team. The Complainant provided information that bowling was also eliminated. According to this information, badminton and bowling were eliminated around the same time because other universities dropped the sports and there was not sufficient competition in the area.

According to the University, it has a Strategic Plan in effect until 2018 “to evaluate and improve gender equity” in its intercollegiate athletics program. According to the University, it did not have any current plans to add or drop any sports in 2015-16 or beyond and, while there have been expressions of interest in sports,<sup>9</sup> there have been no written requests for the addition of an intercollegiate team or elevation of a club team to intercollegiate status.

While OCR acknowledges that the University added women’s rowing in 1994-95 and women’s soccer in 1997-98, which accounted for the addition of 158 female athletes (based on 2015-16 participation rates), the information does not indicate that the University has shown continuing efforts to provide nondiscriminatory participation opportunities for females through a plan of program expansion, particularly because it has not assessed interest, ability, and available competition for women in a meaningful way. Despite expressed interest in adding sports to the University’s athletics program, the University did not demonstrate any plans to expand the program. As the University has not demonstrated a history and continuing practice of program expansion that has been demonstrably responsive to the developing interests and abilities of females, OCR next considered whether the University could show that it is fully and effectively accommodating the athletic interests and abilities of women.

### *Part Three: Effective Accommodation of Interest and Abilities*

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

#### *Unmet Interest*

In determining whether there is unmet interest and ability to support an intercollegiate team in a particular sport, OCR uses a broad range of indicators, including:

- whether the institution uses nondiscriminatory methods of assessment when determining athletic interests and abilities of students;
- whether a viable team for the underrepresented sex recently was eliminated;

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<sup>9</sup>University staff recalled to OCR that there were inquiries by the synchronized swimming club to be elevated but a written request was not submitted, and it was not elevated. There have been verbal inquiries for men’s soccer and men’s and women’s ice hockey, but the dates of the inquiries were unknown and no written requests were submitted to the University. In January 2015 there was an email inquiry to determine if the University would be adding women’s and men’s lacrosse. The University responded that it did not have any short term plans to add any sports, but that lacrosse would be the most likely sport to be added.

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

In addition, OCR evaluates the interests of the underrepresented sex by examining multiple indicators, including:

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

### *Ability*

OCR assesses whether there is sufficient ability among interested students of the underrepresented sex to sustain a team in a sport by examining factors such as:

- The athletic experience and accomplishments (in interscholastic, club or intramural competition) of underrepresented students and admitted students interested in playing the sport;
- The opinions of coaches, administrators, and athletes at the institution regarding whether interested students and admitted students have the potential to sustain an intercollegiate team; and
- If the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team.

OCR also examines other indicia of ability, including:

- Participation in other sports, intercollegiate, interscholastic or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered; and
- Tryouts or other direct observations of participation in the particular sport in which there is interest.

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

### *Intercollegiate Competition*

OCR evaluates whether there is a reasonable expectation of intercollegiate competition for the team in the institution's normal competitive region. In evaluating available competition, OCR considers available competitive opportunities in the geographic area in which the institution's athletes primarily compete, including:

- Competitive opportunities offered by other schools against which the institution competes; and
- Competitive opportunities offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete.

As noted above, the University is a member of the NCAA, the governing athletic conference that organizes and regulates athletic programs at 1,123 post-secondary institutions nationwide.<sup>10</sup> The University is also a member of the Big Ten Conference, a large regional conference that, under the auspices of the NCAA, also organizes and regulates athletic programs at several large, NCAA Division I universities in the midwestern and eastern regions of the United States. The NCAA and the Big Ten sanction competition and offer championships in several women's sports.

OCR noted that the University does not offer several women's sports sanctioned by the NCAA (beach/sand volleyball, bowling, rifle, skiing, fencing, ice hockey, lacrosse and water polo), and at least one sport sanctioned by the Big Ten (lacrosse). The NCAA has also recognized three emerging sports<sup>11</sup> for women: equestrian, rugby and triathlon. None of these sports are offered by the University at the intercollegiate level.

The state high school athletic association, the Iowa Girls High School Athletic Union,<sup>12</sup> sanctions girls' athletics in one sport, bowling, that is not offered at the intercollegiate level at the University.

Among students and coaches interviewed by OCR, men's soccer, lacrosse, water polo and ice hockey were identified as sports for which there may be interest in an intercollegiate team. In 2015-16, women participated in each of the following club sports: water skiing (24), ultimate (22), sailing (20), lacrosse (19), water polo (18), and ice hockey (15). OCR also noted from its Facebook web page site that the University has a co-ed bowling club; students pay to participate in the club. Of these sports, bowling, lacrosse, water polo and ice hockey are sanctioned by the NCAA.

According to the University, it has not assessed the athletic interests and abilities of its female students by means of a survey because it utilizes roster management to maintain substantial proportionality.

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<sup>10</sup><http://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa>

<sup>11</sup><http://www.ncaa.org/about/resources/inclusion/emerging-sports-women> The NCAA recognizes emerging sports to help them to achieve NCAA championship status. Emerging sports are given 10 years to gain NCAA championship status with a minimum 40 varsity programs, or to show steady progress toward that goal.

<sup>12</sup><http://ighsau.org/2014/10/07/history-ighsau/>

OCR examined evidence of available athletic competition within the Big Ten or the geographic region encompassed by the Big Ten. With respect to bowling, the Big Ten has only one participating institution that has intercollegiate women's bowling team. However, there are several Division I women's bowling programs within the geographical region encompassed by the Big Ten, including teams in Indiana, Pennsylvania, New York, and New Jersey.

For ice hockey, the Big Ten has four participating institutions that have an intercollegiate women's team. In addition, there are several Division I women's hockey teams within the geographical region encompassed by the Big Ten. As to lacrosse, the Big Ten has six participating institutions that have an intercollegiate women's lacrosse team, and one other school in the conference has been evaluating adding a men's and women's lacrosse program. For water polo, the Big Ten has two participating institutions that offer an intercollegiate women's water polo team. There are also several Division I women's water polo teams in New York and Pennsylvania, which are within the geographical region encompassed by the Big Ten.

### *Levels of Competition*

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

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

OCR reviewed the 2015-16 competitive schedules for all men's and women's teams and found that the only two sports that competed against Division I teams in less than 100% of their allowable competitions were baseball and wrestling, which composed 16.2% of the male athletes.<sup>13</sup> No athletes or coaches indicated to OCR that there were any problems with the quality of competitive opportunities provided. Accordingly, the information indicates that the University offers its men's and women's teams equivalent levels of competition at the Division I level.

### *Conclusion - Accommodation of Athletic Interests and Abilities*

The information shows that the University offered to its existing men's and women's teams equivalent levels of competition. Before OCR could conclude whether the University is fully and effectively accommodating the athletic interests and abilities of its female students, the University requested to further assess and as appropriate, resolve this component of its athletic program.

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<sup>13</sup>The baseball team played in 4 more games than softball, and played in 5 games below the Division I level; the University lost 3 of the 5 games. As to wrestling, the team played against several colleges who participated in a home meet held on one date early in the season. It won all events in the meet, including those against the Division I and lower opponents.

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

The regulation implementing Title IX, at 34 C.F.R. § 106.37(c), provides that “[t]o the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in . . . intercollegiate athletics.”

In determining compliance with this provision, OCR examines whether the University made proportionately equal amounts of financial assistance (scholarship aid) available to the men’s and women’s athletics programs. OCR calculates this by dividing the amounts of aid available for the members of each sex by the numbers of male and female participants in the athletics program and comparing the results. An institution is considered to be in compliance if this comparison results in substantially equal amounts, or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors.<sup>14</sup> If any unexplained disparity in the scholarship budget for athletes of either sex is one percent or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Conversely, there will be a strong presumption that an unexplained disparity of more than one percent is in violation of the regulation implementing Title IX. OCR evaluates each case in terms of its particular facts.

OCR reviewed the University’s policies and practices for awarding athletic financial assistance to student athletes. University athletes may receive athletic financial assistance to attend the University if they qualify academically and athletically under the rules of the NCAA, the Big Ten, and the University. In accordance with NCAA Division I rules,<sup>15</sup> each sport has a specific number of permissible athletics scholarships. Sports are either “headcount” or “equivalency” sports for purposes of financial aid. Headcount sports have a maximum number of scholarships and a maximum number of athletes who can receive full scholarships. These sports include football, basketball, women’s tennis, women’s gymnastics and women’s volleyball. Equivalency sports have a maximum number of scholarships per team, but the scholarships can be divided among athletes on the team, with some athletes receiving full scholarships or partial scholarships of differing amounts. All of the non-headcount sports at the University are equivalency sports.

According to the Athletics Department, it places no other restrictions on athletic financial aid. The University’s Athletic Director (AD) stated that all sports are funded “100% for NCAA scholarships” and coaches can use their scholarship allotment for in-state or out of state tuition. Athletics grant-in-aid consists of tuition and fees, room and board, books, and other expenses related to attendance, including “cost of attendance” payments as determined by the University.<sup>16</sup>

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<sup>14</sup> A “disparity” in awarding athletic financial assistance refers to the difference between the aggregate amount of money athletes of one sex received in one year, and the amount they would have received if their share of the entire annual budget for athletic scholarships had been awarded in proportion to their participation rates.

<sup>15</sup> See NCAA by-law 15 at <http://www.ncaapublications.com/productdownloads/D118.pdf>

<sup>16</sup> According to information from the University, the cost of tuition, room, board and fees at the University varies depending on the University college in which the student is enrolled, the student’s status as an undergraduate or graduate student, the year the student enrolls, and whether the student is an in-state resident or not. For a student who enrolled in 2015-16, the cost of tuition, room, board and fees and other expenses, including athlete “cost of attendance” stipends, was estimated for the academic year (not including summer school) to be \$21,010 for an in-state student and \$40,796 for an out-of-state student.

Partial athletic scholarships cover varying portions of tuition, room and board and student fees. According to the University, the “cost of attendance” stipend is the same for all sports and is used to calculate financial aid. The University’s policy for awarding athletic financial assistance (AFA) revealed that the criteria are the same for men and women, in accordance with applicable state, institutional and NCAA guidelines.

The following chart summarizes the AFA awarded to male and female student athletes, by team, during the 2015-16 academic year:

**Athletic Financial Aid: 2015-16**

Men	Sport	Women
\$397,124.50	baseball/softball	\$482,661.10
\$458,074.25	basketball	\$558,777.67
\$165,722.00	golf	\$228,546.50
\$218,183.00	tennis	\$333,907.00
\$506,309.25	track/cross country	\$671,713.00
\$409,960.45	swimming and diving	\$508,599.63
\$245,217.00	gymnastics	\$491,933.00
\$2,709,998.25	football	N/A
\$323,741.50	wrestling	N/A
N/A	rowing	\$679,468.50
N/A	field hockey	\$493,212.75
N/A	soccer	\$499,784.50
N/A	volleyball	\$490,464.96
<b>\$5,434,330.20</b>	<b>Total</b>	<b>\$5,439,068.61</b>

For the 2015-16 academic year, athletes received a total of \$10,873,398.81. OCR reviewed the unduplicated participation rates for student athletes. This review showed that there were 744 total athletes, 361 females and 383 males. Female athletes composed 48.5% of the athletes and received 50% of AFA, and male athletes composed 51.5% of the athletes and received 50.0% of AFA. Therefore, during the 2015-16 academic year, the difference between the participation rates and the AFA rates was 1.5 percentage points favoring women. This represented a difference of \$163,100.98.

According to the complaint, the University provides AFA for summer school only for football, field hockey, basketball, cross country, soccer and volleyball. Under NCAA rules for Division I schools, summer financial aid may be awarded if a student has attended the school during the regular term for a minimum of one term or the student is a transfer student and is attending the school’s summer-orientation program.<sup>17</sup> According to the University athletic handbook,<sup>18</sup> financial aid is available in the summer for athletes. According to University staff, the opportunity to receive aid to stay at school during the summer term is available to all students, but the option is a priority for the athletes on the fall sports teams as well as those who need to do so for academic reasons.

<sup>17</sup> See NCAA by-law 15.2.8 at <http://www.ncaapublications.com/productdownloads/D118.pdf>

<sup>18</sup> <http://academics.hawkeyesports.com/pdfs/Student-AthleteHandbook2015-16.pdf>

Conclusion – Athletic Financial Assistance

OCR's investigation confirmed that that University's policy regarding the awarding of athletic financial assistance to student athletes is neutral on its face, and the same criteria are applied for awarding aid to both male and female athletes. OCR further determined that the differences in athletic financial aid awards and athletic participation rates were greater than 1% for the 2015-16 academic year, in favor of female athletes. Before OCR could determine whether the disparity could be explained by legitimate nondiscriminatory factors, the University requested to further assess and, as appropriate, resolve this component of its athletic program.

**III. Other Athletic Benefits and Opportunities**

OCR examined the 11 noted components of the University's program to ensure that it is providing equal opportunity for members of both sexes in its intercollegiate athletics program. OCR evaluates compliance with each program component by comparing the availability, quality and kinds of benefits, opportunities and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent; that is, equal or equal in effect.

For each factor in each program component, OCR examines the factor 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, OCR considers whether the benefit provided to one program was offset by an unmatched benefit to any of the teams in the program for students of the other sex. In making this program-wide comparison, and before OCR concludes that a benefit to one of the teams in the women's program offsets a benefit provided to one of the teams in the men's program, OCR considers whether the offsetting benefits were equivalent or equal in effect. OCR only finds the benefit offsetting if it had the same or a similar effect on the student athlete(s) or team within this program component.

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

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

Under the Policy Interpretation, “equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight training equipment.” The Policy Interpretation lists the following five factors to be assessed in determining whether a recipient provides equal opportunities in the provision of equipment and supplies: quality; amount; suitability; maintenance and replacement; and availability of equipment and supplies.

According to the complaint, football and men’s and women’s basketball get new uniforms every year and sometimes get more than one new set of uniforms, while other sports are on a 2-3 year uniform replacement rotation. The complaint also claimed that field hockey players were unable to purchase waterproof warm-ups because of the cost while other outdoor sports were allowed to buy waterproof warm-ups.

Each men’s and women’s sport was provided a budget to spend on equipment and supplies for the 2015-16 academic year. OCR examined the amount budgeted for each sport and the number of athletic participants for each sport:

**Equipment and Supplies Budget 2015-16**

<b>Sport</b>	<b>Men</b>	<b>#Athletes</b>	<b>Per Athlete</b>	<b>Women</b>	<b># Athletes</b>	<b>Per Athlete</b>
Baseball/Softball	\$152,096	35	\$4,345.60	\$69,797	23	\$3,034.65
Basketball	\$200,600	18	\$11,144.44	\$182,000	28	\$6,500.00
Cross country/ track & field	\$593,200	167	\$3,552.10	\$135,000	126	\$1,071.43
Field hockey	N/A			\$78,300	20	\$3,915.00
Football	\$791,000	123	\$6,430.89	N/A		
Golf	\$26,050	10	\$2,605.00	\$45,355	9	\$5,039.44
Gymnastics	\$17,500	21	\$833.33	\$33,258	23	\$1,446.00
Rowing	N/A			\$100,419	120	\$836.83
Soccer	N/A			\$67,818	38	\$1,784.68
Swimming/diving	\$70,785	38	\$1,862.76	\$77,342	31	\$2,494.90
Tennis	\$46,644	11	\$4,240.36	\$43,597	10	\$4,359.70
Volleyball	N/A			\$66,862	19	\$3,519.05
Wrestling	\$69,460	40	\$1,736.50	N/A		
<b>Total</b>	<b>\$1,967,335</b>	<b>463</b>	<b>\$4,249.10</b>	<b>\$899,748</b>	<b>447</b>	<b>\$2012.86</b>

Overall, the total budget for equipment and supplies was \$2,867,083 in 2015-16. Women, who were 49.1% of the athletes, received \$899,748 or 31.4% of the equipment and supplies budget for 13 sports, while men, who were 50.9% of the athletes, received \$1,967,335 or 68.6% of the equipment and supplies budget for 11 sports. On average, the 463 men received \$4,249.10 per athlete while 447 women received \$2,012.86 per athlete. Among similar teams, all but four men’s teams had larger budgets than the corresponding women’s team: golf, gymnastics, swimming and diving, and tennis.

The Athletic Department has a contract with Nike for the provision of equipment and supplies. If a sport cannot utilize Nike's products, then the items are identified and a provision for non-Nike equipment and supplies is made in the sport's proposed budget.

In examining the quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies, OCR observed that teams generally received equipment and supplies of similar quality, with a few exceptions. Field hockey athletes stated that their competitive uniforms were mismatched in that the fonts and sizes for the lettering were not the same, and that some of the lettering was peeling off. This affected 4.5% of the female athletes.

While head coaches reported that their budgets for Nike equipment and supplies were adequate to purchase enough equipment and supplies for their teams, exceptions were the field hockey team and the men's golf team. Field hockey reported that athletes needed more shoes, practice shorts and t-shirts, and that they did not always have appropriate sizes for their gear. The men's golf team reported that they needed work out gear. The situation with field hockey and men's golf affected 4.5% of the female athletes and 2.2% of the male athletes.

According to coaches and athletes, during the 2015-16 academic year, all teams received suitable equipment and supplies that met the applicable requirements of the governing/sanctioning bodies for their sports. OCR's inspection of the equipment and supplies provided to the University's men's and women's teams, both for play and practice, disclosed no indication that any equipment and supplies were inappropriate or unsuitable.

OCR noted that the University retains ownership of all equipment and apparel, and that the Athletics Equipment Managers have the primary responsibility for storage, maintenance, security, and inventory of uniforms and apparel. Coaches maintain the inventory for all other equipment. OCR observed that the laundering and maintenance of practice and competitive equipment and supplies appeared to be similar across men's and women's teams.

Most athletes reported receiving new or slightly used uniforms and practice gear, and they indicated that apparel is replaced if it is worn or damaged. According to the field hockey team, their uniforms are replaced after 5 years, new, mismatched uniforms are rotated in during the 5 year period, and their skirts are old and frayed. After not having appropriate rain gear, field hockey team members stated that they were finally able to obtain rain gear prior to the 2015-16 season, but it did not fit into their equipment bags. Women's basketball players noted that if any items are lost, they cannot be replaced. The cross country team confirmed that they did not get winter gear until last year. No other male or athletes indicated that obtaining replacement items was a problem. The unresolved issues affected the field hockey and women's basketball teams, which composed 10.7% of the female athletes.

OCR examined whether teams were provided with equivalent maintenance services (such as equipment storage) as well as equivalent replacement schedules. Prior to and after the season, coaches consult with the equipment room and identify apparel and equipment targeted for replacement. Coaches must receive approval from the Sport Administrator before spending beyond the pre-approved budgeted amounts.

Athletes and coaches generally characterized their equipment as adequate to excellent. The women's cross country team, which composed 4.9% of the female athletes, indicated that shoes are withheld from athletes who are "not contributing" to the team. According to the University, it does not support coaches providing shoes and other equipment and supplies based on the performance of the athletes, and no other athletes indicated any problems with the provision of shoes.

OCR's inspection of the equipment and supplies provided to each men's and women's team during the 2015-16 academic year disclosed no other significant disparities regarding the equipment and supplies provided to the men's and women's teams.

### *Conclusion - Equipment and Supplies*

Prior to the conclusion of OCR's investigation, and before OCR could conclude whether any disparities in the provision of equipment and supplies could be explained by legitimate nondiscriminatory factors, the University requested to further assess and, as appropriate, resolve this component of its athletic program.

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

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 time: number of competitive events per sport; number and length of practice opportunities; time of day competitive events are scheduled; time of day practice opportunities are scheduled; and opportunities to engage in available pre-season and post-season competition.

OCR identified slight differences overall between men's and women's teams in the number of competitive events scheduled in the 2015-2016 academic year. OCR did not identify disparities in the scheduling of practice time, as men's and women's teams practiced an average of six days a week. Most teams practiced in the afternoon to evening hours.

Additionally, OCR examined the opportunities for athletes to compete in primetime competitions, which has been defined as evenings<sup>19</sup> that precede days without classroom instruction, usually Friday evenings and Saturdays. While OCR did discover that in three comparable sports, baseball and softball, basketball, and swimming and diving, women's teams competed in prime time more than men's teams during home competitions, overall, men's and women's teams played an average of about 40% of their games in prime time. Thus, OCR did not identify any disparities in the average amount that men's and women's teams competed in prime time slots during home contests.

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

OCR found insufficient information to suggest that the University is failing to provide equal opportunities to males and females in the scheduling of games and practice time.

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<sup>19</sup>Evenings for the purposes of this evaluation were viewed as times being 4:00 p.m. and later.

### **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: modes of transportation; housing furnished during travel; length of stay before and after competitive events; per diem allowances; and dining arrangements.

According to the University, the Head Coach of each team is responsible for submitting an annual budget that will support the competitive schedule and other needs of the sport. The University provides direction to all sports in terms of budgeting travel costs, which include in-state and out-of-state per diem allowances, airfare and baggage cost per person, hotel room cost per night, and bus costs. Additionally, per diems are established in accordance with University guidelines. The University's travel policy includes guidelines for charter flights; sports that rely on charter air must secure estimates for budgeting and approval purposes.

#### *Modes of transportation*

In 2015-16, all University athletic teams traveled nationally to play away events. According to the University, there are four main modes of transportation to away games: 12 and 15-passenger vans and cars when the travel party contains 20 or fewer, commercial buses for travel parties over 20, commercial airlines arranged by the University, and charter flights.

According to the Complainant, football, volleyball, and men's and women's basketball used charter flights to many of their games, while other sports generally were not allowed to use charter flights absent extenuating circumstances. The AD confirmed that football uses charter flights; he stated that this is the most feasible option because of the number of players and staff who travel and the amount of equipment involved. According to information provided by the University, men's teams used charter flights 17 of 60 times they flew to competitions, totaling 28.3% of the flights, and women's teams utilized charter flights 16 of 64, or 25%, of the times they flew. Overall, men's teams traveled by commercial or charter flights to 60 of 149, or 40.3%, of their away competitions, and women's teams traveled by air to 64 of 152, or 42.1%, of their away competitions. Men's teams drove to 89 of 149, or 59.7%, of the away competitions, while women's teams drove to 88 of 152, or 57.9%, of their away competitions.

As for teams staying overnight in a hotel, men's teams stayed overnight for 114 of 149 (76.5%) trips, while women's teams stayed overnight for 128 of 152 trips (84.2%). 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 reported that they did not have adequate time to travel to, prepare for, and compete in away events. 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.

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.

Information provided to OCR shows that all male and female sports are provided the same access to meals during travel and receive identical per diem allowances.

Conclusion - Travel and Per Diem Allowance

OCR considered the modes of transportation, housing furnished during travel, length of stay before and after competitive events, per diem allowances, and dining arrangements for 2015-16, and found no significant disparities based on sex. On this basis, OCR found insufficient evidence to conclude that the University does not provide equivalent opportunities to women athletes in the provision of travel and per diem allowances.

**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 to receive academic tutoring: the availability of tutoring; and 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: tutor qualifications; and training, experience, and other qualifications. The Policy Interpretation also lists five factors to determine whether a recipient provides equal opportunities in the compensation of tutors: hourly rate of payment by nature of subjects tutored; pupil loads per tutoring season; tutor qualifications; experience; and other terms and conditions of employment.

According to documentation provided by the University, and supported by testimony from coaches and male and female athletes, the University monitors the academic progress of all student-athletes. All new student-athletes must complete 4-6 structured study hours per week during their first academic year. Continuing students who have a cumulative grade point average below 2.40 and individuals whose coaches mandate required structured study hours also attend study sessions. Male and female athletes generally advised OCR that they are required to attend study sessions until they can demonstrate that their grades and study habits are good enough that they do not have to attend.

In addition, the athletic progress of student-athletes is managed by a database system, GradesFirst, which is used by the academic services staff to monitor and communicate with student-athletes, coaches, and instructors. The system tracks weekly structured study hours and schedules tutoring appointments. GradesFirst also assists students with time-management and organizational skills by allowing students to input all appointments, practice times, and class times in one centralized location.

Tutoring is available free of charge to all student-athletes, managers, student trainers, and spirit group members. In order to receive individual tutorial assistance, students submit tutoring

requests through GradesFirst. Placements are made based on tutor availability and student's practice and class schedules. General education requests are more likely to be filled than upper level, major-specific courses due to tutor availability. If a tutor is unavailable for a requested subject, the student is referred to alternative tutoring resources provided on campus. Students are permitted to be tutored up to 3 hours per week in a given subject area. However, more tutoring time may be authorized by a student's Academic Coordinator in extenuating circumstances.

According to the University, most tutors are graduate students or teachers who have experience with instruction and learning. Tutors are required to complete training; during training, tutors receive a training manual that explains tutoring policies, NCAA guidelines, and University expectations. Each tutoring session is logged by the tutor at the end of each appointment. The pay scale of each tutor is determined by the level of education the tutor has (i.e. bachelors, masters, doctorate, etc.) and teaching experience.

According to coaches and students, tutoring is available at no cost to athletes through the athletic department or through the University's academic tutoring department. Male and female students alike noted that the quality of the tutors, when available, is generally appropriate.

In 2015-16, male athletes requested tutors 488 times and were matched with tutors 457 times, or 93.6% of the time. During the same period, female athletes requested tutors 441 times and were matched with tutors 380 times, or 86.2% of the time. Coaches explained that as athletes proceed in their studies beyond the general education curriculum, sometimes they have problems finding appropriate academically-advanced tutors; coaches and male and female athletes in many sports reported that they cannot get tutors for specific major classes. Students confirmed that the dearth of tutors was typically for more complex subjects typical of students who were in the advanced portion of their major studies.

#### Conclusion - Tutoring

OCR found no disparities on the basis of sex in the procedures and criteria that must be followed by male and female athletes to obtain tutorial assistance, or the qualifications of the tutors assigned to male and female athletes. However, there is a slight difference in the availability of tutors for female athletes, which may be attributed to the advanced nature of the tutoring needed in their major courses. Prior to the conclusion of OCR's investigation, and before OCR could conclude whether any disparities in the provision of tutoring could be explained by legitimate nondiscriminatory factors, the University requested to further assess and, as appropriate, resolve this component of its athletic program.

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

In determining whether a recipient provides equal opportunities in the availability of coaching, the Policy Interpretation lists the following three factors to be assessed: relative availability of full-time coaches; relative availability of part-time and assistant coaches; and 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: training,

experience, and other professional qualifications; and professional standing. The Policy Interpretation also lists factors to be assessed in determining whether a recipient provides equal opportunities in the compensation of coaches: rate of compensation (per sport, per season); duration of contracts; conditions relating to contract renewal; experience; nature of coaching duties performed; working conditions; and other terms and conditions of employment.

According to the complaint filed with OCR, football and men's and women's basketball are the only teams with a full complement of allowable staff as permitted by the NCAA. The complaint also asserted that there are inequities on the basis of sex in the number of coaches with multi-year contracts.

With respect to the availability of coaches, OCR determined that in 2015-16, the ratio of men's and women's coaches to athletes in both the men's and women's programs was 1:12. The ratio of assistant coaches and graduate assistants slightly favored men's teams at 1:15 as compared to 1:17 for women's teams.

As to the assignment of coaches, coaches of men's and women's teams interviewed by OCR indicated that they perform similar duties (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). 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.

Generally, athletes indicated that they had no concerns about the quality of coaching provided their teams. However, the men's and women's indoor and outdoor track teams, swimming and diving teams, and cross country teams all shared head and assistant coaches and athletes indicated that the head and assistant coaches for track and cross country were spread too thin because of the number of athletes they served. These concerns about the men's and women's track and cross country team coaching affected 28.2% of women athletes and 36.1% of male athletes. OCR observed that baseball and softball had similar coach to athlete ratios, but softball players believed that they needed another assistant coach.<sup>20</sup> The women's soccer athletes expressed concerns about injury rates under their coach. These concerns about softball and soccer affected 13.6% of the women athletes.

In 2015-16, three men's and three women's team head coaches were in their first year. The other men's coaches had experience ranging from 5 to 39 years, with an average of 20.9 years. The other women's coaches had experience ranging from 9 to 31 years, with an average of 16 years.

With respect to compensation, the University asserted that there are no written policies or procedures for determining coaching salaries. The AD stated that coaching salaries are based on market conditions and the coach's background and ability.

OCR observed that on average, head coaches of men's teams had slightly longer contracts and higher salaries than coaches of women's teams. In 2015-16, among teams that do not share head

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<sup>20</sup>Information provided by the University shows that the University subsequently hired a second assistant coach for softball.

coaches, the University spent approximately \$10,117,791 in total salary compensation. Of that amount, \$7,680,982 (75.9%) was earned by head and assistant coaches of men's teams and \$2,436,809 (24.1%) was earned by head and assistant coaches of women's teams. Among non-shared head coaches, the average salary for the men's program in 2015-16 was \$525,311 and for the women's program was \$149,709.

According to one coach, the University paid incentives to some of its men's coaches based on the academic success of the team members, but did not do so for women's team coaches. According to the University, it provided bonuses for actions under the control of the head coach that influenced academic success, such as the academic profile of recruits, student retention, and the graduation rate of athletes. Assistant coaches do not receive incentives for academic success. The information showed that 19% of the men were coached by head coaches who could receive awards based on graduation rates and/or academic success, while 6.3% of the women were coached by head coaches who could receive awards based on graduation rates and/or academic success.

For the 2015-2016 academic year, the evidence revealed that the average duration of contracts for salaried coaches in the men's program was 2.84 years, and in the women's program was 2.04 years. The average contract duration was 6.67 years for head coaches in the men's program and 4.33 years for head coaches in the women's program.

The disparity between the length of contracts for men's program head coaches and women's program head coaches did not seem to correlate with the years of experience of coaches. However, no coaches indicated that the difference adversely affected athletes on the basis of sex and OCR found no information that female athletes were adversely affected by a salary structure that favored coaches of men's teams. Testimony indicated that athletes typically believed that they received good quality coaching regardless of any differences in experience, contract lengths, and salaries of coaches.

### Conclusion - Coaching

Based on the forgoing evidence demonstrating that the ratio of coaches to athletes is the same (although there is slight difference in ratio of assistant coaches and graduate assistants favoring men), and the insufficient evidence that coaching salary structure or other factors has affected the quality of coaching provided to female athletes, overall there is not sufficient evidence 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.

## **6. Provision of Locker Rooms and 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: the quality and availability of the facilities provided for practice and competitive events; the exclusivity of use of facilities provided for practice and competitive events; the

availability of locker rooms; the quality of locker rooms; the maintenance of practice and competitive facilities; and the preparation of facilities for practice and competitive events.

According to the complaint, there are inequities in the provision of locker rooms and practice and competitive facilities, particularly as to the quality of practice and competitive facilities, the location of the facilities, and the availability of locker rooms and restrooms. For example, the complaint asserted that the field hockey locker room is over 600 yards from the competitive facility. Moreover, the complaint asserted that the following teams have locker rooms, rest rooms and meeting rooms in their competitive facilities: football, basketball, tennis, swimming and diving, volleyball and wrestling; this disproportionately benefits men.

OCR examined the University's policies and procedures governing the allocation of locker rooms and practice and competitive facilities, which are set forth in the University's Operations Manual for the 2015-16 academic year. OCR also toured and inspected all locker rooms, practice facilities, and competitive facilities.

### *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) and décor designating the facility for the University team. All facilities have received at least one major renovation and/or addition within the last 10 years. However, OCR also noted that for two sports, soccer and field hockey, the athletes did not have access to restroom facilities other than portable restrooms during competitive events, soccer did not have concessions for spectators, and both teams did not have ready access to their locker rooms and lounges during their competitive events and practices. The playing surface of the softball field was characterized as being too hard. These concerns with competitive facilities affected 18.1% of the female athletes.

According to the information obtained by OCR, certain men's and women's teams share the same competition venue. No athletes or coaches indicated that a competitive event was cancelled because another University team was using the facility. The remaining University teams, football, baseball, softball, field hockey, soccer, and rowing, have exclusive competitive venues, affecting 45% of the female athletes and 34.1% of the male athletes.

As to maintenance, the evidence shows that the University maintains competitive facilities and keeps them in good to excellent order. Male and female athletes agreed generally that their competitive facilities were properly prepared and ready at the time of competition.

### *Practice Facilities*

Numerous teams have facilities separate from their competitive facilities to use for practices. The University provides an additional practice area (Iowa Turf) that is shared by baseball, softball, soccer, and field hockey (7.6% of the male athletes and 18.1% of the female athletes). Most coaches and athletes rated the facility as adequate to good. The facility is clean, well-lighted, and has high quality turf. However, the additional practice area was designed for football and has no

other sport markings on the turf, and there are no scoreboards or clocks. Although soccer and field hockey can stage full practices and scrimmages, baseball and softball practices are limited. Because of the limited ceiling space, live hitting outside of the drop cages is prohibited. Therefore, they are limited to cage hitting, throwing and fielding drills. This affects 7.6% of the male athletes and 5.1% of the female athletes. However, the baseball and softball teams can practice hitting in the Jacobson Building. Soccer athletes stated that sometimes they cannot practice when the marching band is using the facility; this affects 8.5% of the female athletes.

Several teams have sport-specific inclement weather practice areas. OCR noted that 60.2% of male athletes are provided with sport specific inclement practice areas while 38.6% of female athletes are provided with sport specific inclement weather practice areas. The Recreation Center provides inclement weather practice during the outdoor track season for the men's and women's teams, the Hawkeye Tennis and Recreation Center indoor tennis courts provide inclement weather practice for the men's and women's tennis teams, and the Hoak Golf Facility provides inclement weather practice facilities for the men's and women's golf teams. Field hockey, rowing, and football also have their own sport specific alternative indoor practice facilities. However, the Hoak facility, the field hockey facility, and the rowing facility do not offer a full available practice area.

According to the field hockey team, the half pitch facility needs more space and ventilation. This affects 4.5% of the female athletes. Otherwise, coaches and athletes generally rated the practice facilities as good to excellent.

Three teams, men's and women's basketball and women's volleyball, share the Carver Hawkeye Arena (CHA) for practices. Sharing the practice space affects 10.5% of female athletes and 3.9% of the male athletes. All teams have access to a full court of high quality at any time even if all teams are practicing at the same time and the team with the closest home game has priority practice on the main CHA floor. No athletes or coaches reported to OCR that another team otherwise received CHA main floor priority without an upcoming home game.

According to coaches and athletes, the University maintains practice facilities and keeps them in good to excellent order, and prepared and ready at the time of practice.

### *Locker Rooms*

OCR noted that the University generally offers its athletes one of three styles of lockers. The first type of locker, a pro-style locker, is wooden with no door and separate smaller compartments for valuables. Each locker has an individual stool. Football, volleyball, soccer, field hockey, men's and women's basketball, swimming and diving, and tennis use this type of locker. Men's and women's gymnastics also use the basketball team lockers, but only during competitions.

The second type of locker is a full and/or full sized wooden locker with a door. Men's and women's golf, track and field (indoor and outdoor), cross country, baseball, softball, and rowing use these types of lockers. Instead of individual stools, these types of lockers have benches either underneath the locker or in front of the lockers.

The third type of locker is a full-sized metal locker with a screen door. These lockers were generally not in team colors, and did not have any distinctive University team markings. Men's and women's gymnastics and men's wrestling used these types of lockers (13.2% of male athletes and 5.1% of female athletes).

OCR also noted that certain teams shared lockers. These teams included men's track (indoor and outdoor) and men's and women's cross country, men's swimming and diving, and women's rowing (44.3% of male athletes and 31.8% of female athletes). Athletes from certain teams, like men's and women's cross country, stated that rather than have team members share lockers, some members of the teams were assigned lockers outside of the team locker room in the general locker area open to the public; some athletes viewed this as punitive or as unnecessarily segregating teammates. This affected 7.3% of male athletes and 4.9% of female athletes.

In terms of quality, only men's and women's gymnastics athletes criticized the condition of their lockers. Their non-competition locker room is in an older part of the fieldhouse basement. The gymnastics lockers are old, close to the common area, and have no decorations or designations as a University team locker room. The evidence also showed that gymnasts did not have access to their regular locker room during competitions and would use the basketball team locker rooms. These conditions affected 5.1% of female athletes and 4.5% of male athletes.

For showers, vanities, and toilets, OCR observed that but for the men's and women's gymnastics teams and the softball team, the number and quality of the showers, vanities, and toilets were adequate for each team. For their non-competition locker room facilities, the men's and women's gymnastics athletes stated that their locker rooms, showers, vanities, and toilets, although usable, were part of the general locker room facilities of the fieldhouse, were dated, and had no designations as University team areas. The softball locker room at Pearl Field was "small and inadequate." These conditions affected 4.5% of male athletes and 10.3% of female athletes.

In addition, most team locker rooms had a lounge area and/or team meeting rooms, which generally consisted of a separate space with couches/lounge chairs, team related colors and décor, and other amenities like refrigerators, television screens and whiteboards. Although most teams had their own lounge area, men's and women's swimming and diving and men's and women's golf each shared common lounge areas that were accessible through each team's locker room (affecting 10.4% of male athletes and 8.9% of female athletes). The softball team's lounge was located in the Recreation Building while the team's locker room is 1.4 miles away at Pearl Field (affecting 5.1% of female athletes). Men's and women's track and cross country, and men's gymnastics, did not have a separate lounge, affecting 40.6% of male athletes and 28.2% of female athletes. Female gymnasts noted the poor quality of their lounge area, and soccer and field hockey athletes noted that their lounges could not hold the entire team.

Certain teams, like football, volleyball, and men's and women's basketball, also had separate meeting rooms which included theater style seating, a projector, whiteboard, large screen televisions, and technology for presentations and meetings. The football team had separate, distinct meeting rooms for the entire team and for position groups.

Almost all men's and women's teams had a locker room with the exception of men's and women's track and field and men's and women's cross country, who had one locker room solely for the team members but some of whose members also shared locker space with members of the public. Locker room space in the team's locker room was allocated based on individual athlete performance. This condition affected 36.1% of male athletes and 28.2% of female athletes.

The University maintained locker rooms and ensured that lockers, sinks, toilets and showers were in working order. However, the softball locker room at Pearl Field is small and unsatisfactory. OCR received no other concerns from coaches or athletes in this regard. A men's locker room at CHA and a women's locker room at CHA have a problem with vermin. Other than that and the condition with the softball locker room, no athletes or coaches indicated to OCR that their respective locker was not clean and or had adequate supplies for practice and competitive events.

#### Conclusion - Locker Rooms and Practice and Competitive Facilities

Prior to the conclusion of OCR's investigation, and before OCR could conclude whether any disparities in the provision of locker rooms and practice and competitive facilities could be explained by legitimate nondiscriminatory factors, the University requested to further assess and, as appropriate, resolve this component of its athletic program.

#### **7. 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: availability of medical personnel and assistance; health, accident and injury insurance coverage; availability and quality of weight and training facilities; availability and quality of conditioning facilities; and availability and qualifications of athletic trainers.

All athletes were provided physical exams. The University provided all men's and women's teams with a designated team physician and athletic trainer. The football team and men's and women's basketball teams had athletic trainers that traveled to away games with the team on a regular basis, while all other teams traveled to away games with athletic trainers when schedules allowed but otherwise used the services of a trainer provided by the host school.

All men's and women's teams have access to training, strength, and conditioning facilities. OCR noted issues between the softball team and the strength coach and trainers, in that the team was concerned about its training needs and injury prevention practices. This affected 5.1% of the female athletes in 2015-16. Despite this concern, male and female athletes and coaches were generally complimentary about the training and conditioning services and OCR did not identify any differences on the basis of sex in the provision of medical and training facilities and services or in the provision of weight training and conditioning services and facilities.

Conclusion - Medical and Training Facilities and Services

Under these circumstances, OCR finds 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 medical and training facilities and services.

**8. 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: housing provided; and special services as part of housing arrangements (e.g., laundry facilities, parking spaces, maid service).

According to the complaint, the provision of training tables vastly benefits men, and pre and post-game meals are inequitable and for some sports they are available only if the expenses are taken out of another part of the sport's budget.

Prospective student-athletes who will live in University housing must complete a housing application and pay an application fee, which is required of all students. University policy prohibits coaches from having direct contact with the University's Housing Office and all communications are through the University's Office of Athletics Compliance. Athletes indicated that the University housing is the same as provided to non-athletes and that there are no special amenities. Male and female athletes indicated that the housing they are provided is similar.

Information provided by the University established that the athletic department negotiates an agreement with University Housing for a set number of beds in three different dormitories. In 2015-16, 116 rooms were requested for student-athletes, of which 63 rooms were requested for male student-athletes and 51 rooms were requested for female student-athletes. In addition, the University houses football players in a hotel the night before home games, which benefits 26.6% of male athletes. No women receive this benefit.

With respect to dining, student-athletes on scholarship are provided a meal plan and all student-athletes are provided other meals related to their participation in athletics. According to the University, members of the football team may be provided up to two meals a day. These meals are catered into the football training facility or provided at a local restaurant. The coaches for the men's and women's basketball teams, and the coaches for the women's volleyball team, have the option to provide athletes one meal a day during the playing season when not traveling. Male basketball and football athletes composed 30.5% of all male athletes, while women's volleyball and women's basketball athletes composed 10.5% of all female athletes. All other teams are provided 30 additional meals a semester, to be used at their own discretion, at a dormitory dining facility. During vacations, if student-athletes are required to remain on campus for athletic participation, meals or cash are provided to athletes.

The University also offers refueling stations for student-athletes that allow all student-athletes access to nutritional snacks and drinks from a place adjacent to their practice facilities or near the

location of their structured study time. Sports that do not train or study near the location of a training station may arrange to pick up food.

### Conclusion - Housing and Dining

Prior to the conclusion of OCR's investigation and before OCR could conclude whether any disparities in the provision of housing and dining could be explained by legitimate nondiscriminatory factors, the University requested to further assess and, as appropriate, resolve this component of its athletic program.

#### **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: availability and quality of sports information personnel; access to other publicity resources for men's and women's programs; and quantity and quality of publications and other promotional devices featuring men's and women's programs.

According to the complaint, the qualifications and experience of sports information personnel vary based on the sex of the team, with the best qualified personnel serving football, basketball, baseball and wrestling, while undergraduate students or interns are assigned to some of the other teams. Moreover, the complaint asserted that there are significant inequities on the basis of sex in the promotion and marketing of sports.

According to the University, the Athletics Communications Office (ACO) is charged with producing professional publicity materials in accordance with the University, Big Ten Conference and NCAA policies, rules and regulations. The University also has an External Affairs Unit that is charged with producing materials external to the University, and features departments for marketing, video production, graphic arts, new media, social media, photography, group ticket sales, athletics communication, the Big Ten Network, and Hawkeye Sports Properties. The University reported that in 2015-16, it had 19 sports information personnel assigned to these offices.

During the 2015-16 academic year, the ACO coordinated the production of publications and promotional materials, including schedule magnets, schedule cards, key tags, posters, print media guides, electronic media guides and game programs. Each intercollegiate sport has an annual media guide produced in printed and/or online format, in accordance with the individual sport requirements and NCAA regulations. Women's volleyball received all available media. Football, wrestling, and men's and women's basketball received all available media save programs. All other men's and women's teams received a combination of the available media. Men's and women's cross country and men's and women's golf shared a combined schedule card.

In addition, the University has a web page<sup>21</sup>, which links to web pages for each of the University men's and women's intercollegiate teams. Along with the team schedules, rosters, news and competitive results, each team has a link to its own social media pages.

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<sup>21</sup> [www.hawkeyesports.com](http://www.hawkeyesports.com)

Competitions are made available on television through the Iowa All-Access Network and the Big Ten Network. The networks offer opportunities to view men's and women's sports live and on demand.

During interviews, some athletes expressed dissatisfaction with the amount of social media provided for their sports. However, both male and female student athletes expressed similar criticisms. No athlete or coach attributed any lack of publicity to the sex of the athletes so much as the popularity of the sport.

### Conclusion - Publicity

The University provides publicity to men's and women's teams in a variety of media, including television, web streaming, web sites, social media, and printed and online materials such as schedule magnets, schedule cards, key tags, posters, print media guides, electronic media guides and game programs. Most publicity materials are online and the quality and quantity of the materials was similar for men's and women's teams.

Based on the information, OCR did not identify significant disparities based on sex in the provision of publicity and media; therefore, there is insufficient evidence that the University has failed to provide equivalent benefits, treatment, services and opportunities to male and female athletes in the provision of publicity.

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

The Policy Interpretation lists two factors to be assessed to determine whether a recipient provides equal opportunities in the provision of support services: the amount of administrative assistance provided to men's and women's programs; and the amount of secretarial and clerical assistance provided to men's and women's programs. According to the complaint filed with OCR, there are inequities on the basis of sex in the provision of administrative support, secretarial support, and office space and equipment in that only football, men's and women's basketball, wrestling, and volleyball have office suites for their coaches.

According to information provided by the University, the University provides administrative assistance to all teams in arranging services for athletes, travel, equipment and supplies, events for the public, statutory and regulatory compliance, and numerous other areas related to the functioning of the athletic teams. All coaches interviewed by OCR asserted that they are able to use University athletic support offices to assist in the day to day administration of their programs. None asserted to OCR that they have been denied access to these offices.

According to the University, the AD and two Associate ADs are supported by two full-time administrative staff members, and clerical support is available to assist all department staff. The University's larger and more high profile teams (football, men's and women's basketball, volleyball and wrestling) have at least one secretary, one intern, and one student worker assigned to each respective team. For the remaining teams, there are a total of 3 administrative assistants as well as interns and student workers.

Football, located in the Hansen Center, has all of its offices and clerical resources on one floor, as well as separate offices for the Head Coach and several assistant coaches. The swimming and diving offices, located near the pool in the Campus Recreation and Wellness Center, have a receptionist, a reception area, and private offices for the head coach and assistant coach of the team, as well as space for interns and student workers.

All other athletic team offices are located in CHA. Men's and women's basketball, volleyball, and wrestling have separate office suites for the head coach, assistant coaches, and support staff. Each office suite has a receptionist, a waiting room, and individual offices. The remaining teams share one large suite of offices with at least one office for the head coach and one assistant, and a shared receptionist and waiting room. Coaches expressed no major objections to 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' activities. The time spent by coaches on clerical support services varied by sport, but no difference was noted between men's and women's teams. Of the athletes 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. While OCR noted differences overall between men's and women's teams in the size, amenities and availability of office space, and in the amount of administrative, secretarial, or clerical assistance available, OCR found no indication that the differences adversely affected the athletes. 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.

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

The Policy Interpretation lists three factors to be assessed in determining whether a recipient provides equal opportunities in the recruitment of student athletes: whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit; whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program; and 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.

In 2015-16, the University budgeted \$1,602,129.00 for all recruiting, with \$875,571 allocated for men's teams and \$726,558 for women's teams. As such, women composed 49.1% of all of the University's athletes in 2015-16 and received 45.3% of the recruiting budget. The difference represented a total of \$60,087 favoring men's teams.

The University asserted that it places no restrictions on recruitment. Coaches are not limited to domestic travel or restricted to a set ratio of in-state to out-of-state scholarships. All recruiting personnel are bound by the recruiting rules of the NCAA that apply to their sports. In some cases, the sport is limited to a specific number of recruiting person days or evaluation days during the academic year or specific recruitment period. According to the University, on official recruiting visits, the football team may provide meals to up to four family members. In men's and women's basketball, the University may pay the actual round trip costs for up to two parents or legal guardians of the prospect.

All head and assistant coaches reported that recruiting is a significant part of their jobs. Most men's and women's team coaches recruit through social media and the internet. They use email, look online at statistics, and view videos sent to them by athletes or coaches. They travel to showcases and tournaments, and sometimes to personally meet the recruit and his or her family. All men's and women's teams reported offering unofficial and official visits to the school.

In 2015-16, the men's and women's track and swimming and diving teams had an equal number of recruiting opportunities because typically swimming and diving competitions and track and field competitions are co-ed events. In other comparable sports with the exception of the men's and women's gymnastics, men's teams consistently had more recruiting opportunities than women's teams.

To help with the recruiting process, in 2015-16, the men's program had a total of 33 courtesy cars while the women's program received 24 courtesy cars. The football team alone had a total of 14 courtesy cars. The University attributed this to the high number of recruiting trips that the football team undertook during 2015-16.

According to the University, each sport has a specific number of permissible athletic scholarships it may award. The number of committed recruits needed by each sport, therefore, could vary each year due to the type of scholarship (head count versus equivalency) limits on the number of athletes allowed, turnover, and/or career-ending injuries.

In 2015-16, men's teams reported 185 official and 280 unofficial visits made by prospective athletes and women's teams reported 158 official and 180 unofficial visits made by prospective athletes. No men's teams expressed concerns with their recruiting budgets or opportunities, but three women's teams did: field hockey, softball and basketball. The field hockey coach noted that the team needed more funds that year to recruit internationally. The softball head coach noted that her team was not allowed to use private charter flights for recruiting trips, which made the trips longer than necessary. The women's basketball coach indicated similar concerns in that unlike the men's basketball team, she cannot generally use private planes for recruiting, so she has to use her team budget. The concerns about field hockey, softball, and basketball recruiting affected 15.9% of the female athletes in 2015-16.

### Conclusion - Recruitment

Prior to the conclusion of OCR's investigation, and before OCR could conclude whether any disparities in recruitment could be explained by legitimate nondiscriminatory factors, the

University requested to further assess and, as appropriate, resolve this component of its athletic program.

#### **IV. Overall conclusion**

OCR found insufficient evidence of a violation in 6 component areas: scheduling of games and practice times, travel and per diem, coaching, medical and training, publicity, and support services. The University requested to further assess and, as necessary, resolve the following seven components of this investigation: athletic interests and abilities, athletic financial assistance, equipment and supplies, tutoring, locker rooms and practice and competitive facilities, housing and dining, and recruitment. In accordance with OCR's *Case Processing Manual*, the enclosed Agreement is aligned with the complaint allegations and the information obtained during the investigation of the allegations, and is consistent with applicable regulations.

Please be advised that should the University fail to fully implement the Agreement and to provide data to OCR in order for OCR to determine compliance with the Agreement, then OCR will take appropriate action to ensure the University's compliance with Title IX. Accordingly, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. However, before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR will provide the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a complaint investigation, or participated in actions to secure protected rights. If this happens, the individual may file a complaint alleging such treatment.

The complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR wishes to thank the University and particularly Ms. Carroll Reasoner, General Counsel, for the cooperation extended to OCR during the course of this investigation. If you or your staff has

any questions regarding this letter or during the monitoring of the University's implementation of the Agreement, please contact me at (312) 730-1611 or by email at [Jeffrey.Turnbull@ed.gov](mailto:Jeffrey.Turnbull@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Ms. Carroll Reasoner