



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

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December 3, 2019

Dr. Thomas Mitzel
President
Dickinson State University
291 Campus Drive
Dickinson, ND 58601

Re: OCR #05-16-2047

Dear Dr. Mitzel:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case resolution activities for the above-referenced complaint filed against Dickinson State University (University) alleging discrimination on the basis of sex.

The complaint alleged that the University discriminates against female students by failing to provide them with intercollegiate athletic opportunities equal to male students in the accommodation of athletic interests and abilities and provision of equipment and supplies. OCR investigated whether the University provides equal athletic opportunities for members of both sexes in the above-referenced areas and also examined whether the University provides to male and female athletes athletic financial assistance in proportion to their participation rates in the intercollegiate athletics program, as well as whether the University provides equal athletic opportunities to male and female athletes with regard to benefits and opportunities in the University's provision of the following: scheduling of games and practice time; travel and per diem allowances; opportunity to receive academic tutors and coaches; assignment and compensation of tutors and coaches; locker rooms and practice and competitive facilities; medical and training facilities and services; housing and dining facilities and services; publicity; support services; and, recruitment of student athletes.

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

During its investigation, OCR obtained information from the Complainant and the University and conducted an on-site visit to interview University employees and athletes and to review University athletic facilities and equipment and supplies. Prior to the completion of OCR's investigation in seven program component areas (accommodation of athletic interests and abilities, provision of athletic financial assistance, provision of equipment and supplies, scheduling of games and practice time, provision of travel and per diem allowances, opportunity to receive coaches and assignment and compensation of coaches, and provision of locker rooms

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

and practice and competitive facilities) on November 25, 2019, the University signed the enclosed Resolution Agreement in which it pledges to assess its compliance in the issue areas noted and, working collaboratively with OCR, to take proactive measures to resolve any deficiencies identified as a result of its assessments.

In addition, OCR determined that there is insufficient evidence to establish a violation of the applicable regulations with regard to the remaining six program component areas (opportunity to receive academic tutoring and assignment and compensation of tutors, medical and training facilities and services, provision of housing and dining facilities and services, provision of publicity services, provision of support services, and recruiting). A summary of OCR's findings and observations follows.

Legal Standards

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."

The provision of athletic scholarships or grants-in-aid is addressed in the regulation implementing Title IX, at 34 C.F.R. § 106.37(c), which states that "to the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in ... intercollegiate athletics."

In addition, the regulation implementing Title IX requires a recipient to provide equal athletic opportunities for members of both sexes in the provision of equipment and supplies (34 C.F.R. §106.41(c)(2)); travel and per diem allowances (34 C.F.R. § 106.41(c)(4)); scheduling of games and practice times (34 C.F.R. §106.41(c)(3)); opportunity to receive academic tutoring and assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); provision of locker rooms 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)).¹

OCR examined the 11 program components identified in the preceding paragraph to determine whether the University provided equal opportunity for members of both sexes in its intercollegiate athletics program. OCR evaluated compliance with each program component by

¹In addition to the regulation implementing Title IX, OCR used the Intercollegiate Athletics Policy Interpretation (Policy Interpretation), issued December 11, 1979; 44 Fed. Reg. 71,413 (1979), <http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>

comparing the availability, quality and kinds of benefits, opportunities and treatment afforded members of both sexes. Institutions are in compliance with these regulations if the compared program components are equivalent; that is, equal or equal in effect. For each factor in each of these 11 program components, OCR examined the factor relating to the benefits, opportunities or treatment of male and female athletes. Once each factor was analyzed, then OCR made a determination for that program component. OCR considered whether the same or similar benefits, opportunities or treatment were provided for all students, or, if not, whether the differences had a negative effect on one sex that resulted in a disparity. When disparities were identified between the men's and the women's teams, e.g., if a men's team received a superior benefit in some way, then OCR considered whether the benefit provided to the men's program was offset by an unmatched benefit to any of the teams in the women's program. In making this program-wide comparison, and before OCR concluded that a benefit to one of the teams in the women's program offset a benefit provided to one of the teams in the men's program, OCR considered 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 identified disparities, and if it found no evidence of offsetting, OCR considered whether the differences between the benefits provided to the men's and women's programs were negligible. Where the disparities were not negligible, OCR examined whether the disparities were the result of legitimate, nondiscriminatory factors. If OCR found no legitimate, nondiscriminatory reasons for the disparities, OCR then determined 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 was not to ensure identical benefits, opportunities, or treatment, but rather to ensure that overall, the athletics program provided equivalent benefits to men and women.

Background

The University is a regional four-year institution within the North Dakota University System located in Dickinson, North Dakota. According to the University,² in fall 2018, there were 1,375 undergraduate students at the University. Of these, 902 students were full-time undergraduates, with 384 males (42.6%) and 518 (57.4%) females. The University is a member of the National Intercollegiate Athletic Association (NAIA), a national governing body for college athletics, as well as a member of the North Star Athletic Association (NSAA) conference. The University offers 15 competitive sports, including 14 sports that compete under the auspices of the NAIA/NSAA. The 14 sports are seven men's teams (basketball, cross-country, football, golf, indoor track & field, outdoor track & field, and wrestling) and seven women's teams (basketball, cross-country, golf, softball, indoor track & field, outdoor track & field, and volleyball). The University also has rodeo, a co-ed sport, which belongs to the National Intercollegiate Rodeo Association (NIRA).

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<https://app.powerbi.com/view?r=eyJrIjoibmYzOGVIMjktZmM0Zi00M2YxLWI2NDEtZWVxMDA1M2VkMzUzIiwidCI6ImVjMzdhdjZkLW15YTtNDdlnS05OGQwLTkwM2Q0YTQxOTIwMyIsImMiOiN9>

Facts and Analysis

Accommodation of Athletic 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 considered whether the selection of sports and levels of competition at the University effectively accommodate the interests and abilities of both sexes.

Selection of Sports

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.

Under part one of the Three-Part Test, where an institution provides intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes. OCR will also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team; i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number that might vary by institution.

In 2018-19, the University’s athletic participation rates were as follows:

2018-19 Sports Participation Rates

Male Participants	Sport	Female Participants
16	basketball	14
9	cross-country	9
110	football	N/A
4	golf	6
25	indoor track	24
27	outdoor track	24
11	rodeo	11
N/A	softball	18
N/A	volleyball	22
27	wrestling	N/A
229	Total	128

In 2018-19, there were 357 athletes who participated in intercollegiate sports at the University. Of these, men (who composed 42.6% of the undergraduate enrollment) were 64.1% of the athletic participants. Women (who composed 57.4% of the undergraduate enrollment) were 35.9% of the athletic participants. Women are the underrepresented gender in the athletics program at the University; the size of the disparity is 21.5 percentage points, which represents 181 women who would have to be added to the athletics program in order to achieve exact proportionality. The size of the disparity is greater than the average size of the women’s teams.

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

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

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

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

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

The University provided information showing the history of its establishment of various intercollegiate sports, and in some cases, its discontinuation of some intercollegiate sports. All of the sports currently offered for men and five of the sports currently offered for women (basketball, cross-country, indoor and outdoor track, and rodeo) were all added between 1922 and 1957. In addition, volleyball was added in 1974, softball was added in 1995, and women's golf was added in 1999.

At some point, the University offered but then dropped men's boxing and tumbling. Men's tennis started in the early 1950s and was eliminated in 2000, according to the University, for lack of participants. University yearbooks show a women's tennis team was offered in the 1970s, but the team was subsequently eliminated. Men's and women's gymnastics began competition in the 1960s but were subsequently eliminated. Men's and women's golf were defunded and scheduled to be eliminated after the 2017-18 season, but the head coach secured donor funding to allow both teams to continue. Baseball began competition in the 1930s and was eliminated at the end of the 2017-18 academic year, assertedly for financial reasons. The University has recently announced that it is reinstating baseball in 2020-2021.³

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

The Policy Interpretation provides that an institution may determine the athletic interests and abilities of students by nondiscriminatory methods of its choosing provided that the processes take into account the nationally increasing levels of women's interests and abilities, the methods of determining interest and ability do not disadvantage the members of the underrepresented sex, the methods of determining ability take into account team performance records, and the methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

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:

³See https://billingsgazette.com/sports/dickinson-state-university-to-bring-back-baseball-in/article_cf265847-1e1a-5307-b342-46a21d2b7326.html. According to this article, the University has decided to add junior varsity teams in volleyball and men's and women's basketball, as well as esports.

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

Further, 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.

With respect to the frequency of assessment, OCR evaluates whether an institution assesses interest and ability periodically so as to be able to identify any developing interests and abilities of the underrepresented sex in a timely and responsive manner; this evaluation takes several factors into account, including:

- the degree to which the previous assessment captured the interests and abilities of the institution's students and admitted students of the underrepresented sex;
- changes in demographics or student population at the institution (e.g. virtually complete student body turnover every four years at a typical four-year institution); and
- whether there have been complaints from the underrepresented sex with regard to a lack of athletic opportunities or requests for the addition of new teams.

In assessing ability, OCR examines indicia such as:

- the athletic experience and accomplishments – in interscholastic, club or intramural competition – of students and admitted students interested in playing the sport;
- opinions of coaches, administrators, and athletes at the institution regarding whether interested students and admitted students have the potential to sustain a varsity 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.

Neither a poor competitive record nor the inability of interested students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of

ability. It is sufficient that interested students and admitted students have the potential to sustain an intercollegiate team.

Finally, OCR determines whether there is a reasonable expectation of intercollegiate competition for a particular sport in the institution's normal competitive region. In evaluating available competition, OCR will look at 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.

In this case, the Complainant asserted that the University does not accommodate the athletic interests of females because it does not offer an intercollegiate women's soccer team. The Complainant asserted, and OCR confirmed, that the University's "Title IX Compliance Committee" issued a report in 2014 (2014 report) recommending that the University add a women's intercollegiate soccer team, but the University did not do so.⁴

The University does not have a formal process for students, coaches, or others to request the addition of an intercollegiate team or the elevation of a club team to intercollegiate status. The University indicated that there have been no requests to expand the women's intercollegiate athletics program. The University did not provide OCR information to indicate that it has conducted any interest surveys.

As noted above, the University's teams affiliate with and compete as part of the NAIA. Women's sports sanctioned for competition by the NAIA that are not offered at the University include bowling, swimming and diving, soccer, tennis, wrestling and, lacrosse. Of these sports, soccer and women's wrestling are the only women's sports that are also sanctioned by the NSAA but not offered by the University.

During OCR's investigation, University athletics staff and athletes identified soccer, swimming, and gymnastics as women's sports in which there may be student interest. Athletes also expressed interest in reinstating baseball and adding men's soccer and lacrosse.

Three teams in the NSAA conference and several NAIA institutions in the nearby Heart of American Conference offer women's soccer. As noted below, the University's men's and women's teams compete outside of its conference from time to time.

According to University demographics reports from fall 2018, between 75 and 80% of the undergraduate students who attend the University are from North Dakota.⁵ The North Dakota

⁴ Information provided by the University shows that the Committee recommended the addition of women's soccer in June 2014, and, in November 2014, the University's President accepted the recommendation to add women's soccer as of fall 2016. In Spring 2015, the University's President was notified that the addition of soccer was delayed to 2016-2017 (for hiring a coach) and 2017-2018 (for the addition of the team).

⁵ <https://www.dickinsonstate.edu/Assets/uploads/files/institutional-research/2018-2019%20Dickinson%20State%20University%20Common%20Data%20Set.pdf>

High School Activities Association sanctions the state's girls' sports at the high school level, including five sports the University does not offer for women: gymnastics, ice hockey, soccer, swimming and diving, and tennis.

Levels of Competition

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

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

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

Coaches of men's and women's sports and male and female intercollegiate athletes generally indicated to OCR that they have good quality competitive schedules and typically play teams of comparable or superior skill. OCR reviewed the men's and women's teams' competitive schedules for 2018-19 and noted that men's and women's teams generally competed against other NAIA teams. Similar men's and women's teams had similar competitive schedules and both men's and women's teams sometimes competed against teams from Division II and III of the National Collegiate Athletic Association (NCAA), as well as teams affiliated with Christian athletic conferences, Canadian college teams and tribal teams.

OCR determined that the University offers its men's and women's teams equivalent levels of competition. As to the provision of participation opportunities, the University intercollegiate level participation opportunities for male and female students are not provided in numbers substantially proportionate to their enrollments and 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. The University observed that there was a sufficient basis to offer a women's soccer team, but it has not done so despite the recommendation of its Title IX Committee; meanwhile, despite the overrepresentation of males in the athletics program, it has decided to reinstate intercollegiate baseball.

Prior to OCR's making a determination with respect to this component, the University signed the enclosed Agreement to resolve this component.

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

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

In determining compliance with this provision, OCR examined whether the University made proportionately equal amounts of athletic financial assistance (AFA) available to the men's and women's athletics programs. OCR calculated this by dividing the amounts of AFA 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.⁶ If any unexplained disparity in the AFA awarded to athletes of either sex is 1% or less, 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 1% is in violation of the regulation implementing Title IX. Even if an institution consistently has less than a 1% disparity, the presumption of compliance with Title IX might still be rebutted if, for example, there was direct evidence of discriminatory intent.

In this case, University athletes may receive AFA to attend the University if they qualify academically and athletically under the rules of the NAIA, the NSAA, and the University. The University awards AFA to athletes on a case-by-case basis. Scholarships are awarded based on a student's athletic ability and potential to positively represent the University.

Under NAIA rules,⁷ institutions determine how much AFA is awarded to each athlete, but the total amount is limited to the cost of tuition, room, board, fees, and supplies. AFA is awarded at the University in the form of a tuition waiver and/or a room waiver. Each sport has a limit on the amount of AFA it can award to athletes but AFA may be awarded on an equivalency basis, which means the total AFA dollars may be divided among as many athletes on the team as the institution wishes, so long as the combined total does not exceed the total amount allowed per sport.

In 2018-19, University tuition, fees, and room and board⁸ for a full-time student ranged from a low of \$10,282 for an in-state student in the least expensive housing to \$12,688 for an out-of-state student in the most expensive housing.

In 2018-19, for sports offered at the University, the NAIA limit on AFA grants is as indicated in the table at the top of the following page.

⁶ A “disparity” in awarding AFA refers to the difference between the aggregate amount of money athletes of one sex received in one year, and the amount they would have received if their share of the entire annual budget for athletic scholarships had been awarded in proportion to their participation rates.

⁷ http://www.naia.org/ViewArticle.dbml?DB_OEM_ID=27900&ATCLID=211685376

⁸ <https://www.dickinsonstate.edu/admissions/tuition-and-cost-to-attend/>

NAIA AFA grant limits 2018-19

Men	Sport	Women
N/A	baseball ⁹ /softball	10
11	basketball	11
5	golf	5
17	I/O track/cross-country	17
24	football	N/A
N/A	rodeo	N/A
8	wrestling	N/A
N/A	volleyball	8
65	Total	51

OCR observed that, in 2018-19, the University allocated \$676,939.50 in total AFA to its male and female athletes, as shown below:

Athletic Financial Assistance 2018-19

Men	Sport	Women
\$4,325.00	baseball/softball	\$57,500.00
\$61,950.00	basketball	\$59,630.00
\$2,780.00	golf	\$13,450.00
\$78,230.00	I/O track/cross-country	\$96,562.00
\$217,286.00	football	N/A
N/A	rodeo	N/A
\$42,525.50	wrestling	N/A
N/A	volleyball	\$42,701.00
\$407,096.50	Total	\$269,843.00

Considering athletes who compete on multiple teams,¹⁰ in 2018-19, male athletes were 168 (65.9%) of the 255 athletic participants on one or more team, and female athletes were 87 (34.1%) of the 255 participants on one or more team. During the same period, males received 60.1% of the total amount of AFA and females received 39.9% of the total amount of AFA. Although men received more AFA overall, the allocation of AFA in 2018-19 disproportionately favored women by 5.7 percentage points, or approximately \$38,871.

OCR does not require post-secondary institutions to grant the same number of scholarships to men and women, and it does not require individual scholarships to be of equal value. Instead it requires that the total amount of scholarship aid made available to men and women must be substantially proportionate to their athletic participation rates. If OCR’s financial comparison does not result in substantial proportionality, then OCR considers whether the disparity can be

⁹ The University continued to honor remaining athletic scholarships for baseball after it dropped baseball in 2017.

¹⁰ For purposes of considering the allocation of AFA, each athlete is only counted once even if the athlete competes on multiple teams.

explained by legitimate nondiscriminatory factors. In this case, OCR has not obtained the University's nondiscriminatory its justification for the disparity.

OCR's investigation confirmed that the University's policy regarding the awarding of AFA 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 AFA awards and athletic participation rates were greater than 1% for the 2018-19 academic year, in favor of female athletes. Prior to OCR's making a determination with respect to this component, the University signed the enclosed Agreement to resolve this component.

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: (1) quality; (2) amount; (3) suitability; (4) maintenance and replacement; and (5) availability of equipment and supplies.

Coaches and athletes on men's and women's teams overall assessed the quality of their equipment and supplies similarly. Male and female athletes and coaches of men's and women's teams generally characterized their equipment and supplies as good.

The men's and women's head coaches reported that each team is allocated a budget to spend on equipment and supplies. Male athletes and some female athletes indicated that the University and the booster club provided some equipment and supplies. Generally, coaches reported that their budgets were adequate to purchase uniforms and other equipment and supplies. All athletes reported that they had to purchase their own shoes. The rodeo coach indicated that athletes provide all of their own equipment and supplies except the University provides each participant a competition vest.

While the volleyball coach did not indicate that the balls used by the team are not of appropriate quality or are unsuitable, the coach said the team lacked a sufficient amount of balls of the same brand that are used in competition; she said that the equipment dates to 2008. The volleyball players indicated the nets were old. The women's basketball coach indicated that the quality of the basketballs was poor and the women's basketball players reported the basketball shooting gun (shared with the men) was broken. According to the University, athletes on the men's and women's golf team have to purchase their golf bags, which are approximately \$140. Overall, 29.7% of female athletes and 1.8% of male athletes reported some problem with the amount of equipment and supplies provided to their respective teams.

Laundering of competitive, practice and workout gear varied by team. With respect to competition gear, 93.4% of males have their competition gear laundered for them and 72.7% of female athletes have their competition gear laundered for them.

Prior to OCR’s making a determination with respect to this component, the University signed the enclosed Agreement to resolve this component.

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 times: (1) number of competitive events per sport; (2) number and length of practice opportunities; (3) time of day competitive events are scheduled; (4) time of day practice opportunities are scheduled; and (5) opportunities to engage in available pre-season and post-season competition.

All men’s and women’s intercollegiate athletics teams competed in the maximum number of competitions and/or events allowed by NAIA guidelines. All teams held regularly scheduled, in-season practices, and most teams practiced on average two to three hours during a day, five days per week. The practice hours for each of the teams varied, with each team practicing on an identifiable schedule in the late afternoon or evening. Most male and female athletes and coaches interviewed by OCR indicated that their teams have a sufficient number of practices during their competitive seasons. The women’s basketball athletes reported that they had too many practices (2-3 per day during pre-season), including early morning practices.

OCR reviewed the time of day competitive events were scheduled for 2018-19 to determine whether events were scheduled equivalently in “prime time” for men’s and women’s teams. Prime time for athletic competitions is defined as evenings¹¹ that precede days without classroom instruction, as well as weekend afternoons.

Men’s and women’s cross-country and men’s and women’s indoor track had no home meets. Men’s and women’s outdoor track, golf, and rodeo shared the same home competition schedule. Among the other sports, women competed in prime time for 20 of 38, or 52.6%, of home competitions and men competed in prime time for 16 of 18, or 88.9%, of home competitions.

Several women’s and men’s basketball games were played as doubleheaders on Saturdays. In each case, the men played in the later game.

The time of day teams practiced varied by team, with the majority of teams practicing in late afternoons. Some male and female athletes stated that practices sometimes conflicted with their class schedules or mealtimes.

Prior to OCR’s making a determination with respect to this component, the University signed the enclosed Agreement to resolve this component.

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

The Policy Interpretation lists five factors to be assessed in determining whether a recipient provides equal opportunities in the area of travel and per diem allowance: (1) modes of

¹¹ Evenings for the purposes of this evaluation were viewed as times being 4:00 p.m. and later.

transportation; (2) housing furnished during travel; (3) length of stay before and after competitive events; (4) per diem allowances; and (5) dining arrangements.

Most male and female athletes and coaches indicated to OCR that they are transported to competitions via charter bus with a driver, or by University van driven by a coach or staff member. Occasionally, male and female athletes fly to competitions. Male and female rodeo participants transport themselves and their horses. The men's basketball athletes stated that they travel by charter bus with a driver; the women's basketball athletes indicated that they travel by van if just women are traveling, but when they travel with the men, they go by charter bus.

With respect to room assignments, coaches for all teams other than football indicated that they generally slept four athletes to a room, and two to a bed. The football coach indicated that male athletes sleep three or four to a room while on travel. The University stated that football was able to have extra rooms, and two athletes to a room, when the University was reimbursed by the NAIA for two playoff games. The University stated that men's and women's basketball have equal number of rooms on their trips, with usually three or four athletes in a room, per team. However, female basketball players indicated that they have four athletes to each room while male basketball players stated that they are assigned two to each room. The University stated that teams may fundraise to afford more rooms with fewer athletes in a room.

Prior to OCR's making a determination with respect to this component, the University signed the enclosed Agreement to resolve this component.

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

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

In considering the availability of coaching, the Policy Interpretation lists the following three factors to be assessed: 1) relative availability of full-time coaches; 2) relative availability of part-time and assistant coaches; and 3) relative availability of graduate assistants, if applicable.

In 2018-19, men's teams had 25 coaches for 229 athletes and women's teams had 17 coaches for 128 athletes, meaning the ratio of head and assistant coaches to athletes was equivalent for men

and women (1:8). OCR observed that 93.4% of the male athletes but 79.7% of the female athletes were on a team that had at least one assistant coach.¹²

All men's and women's teams have a head coach. All head coaches have other positions, including as instructors, administrators, or head or assistant coaches for other teams. Coaches of men's and women's teams generally indicated that they are available for practices and competitions. The volleyball coach indicated that she effectively does not have an assistant as the assigned assistant is not paid enough and cannot travel with the team; she therefore believes she needs another coach. The softball coach indicated that her staff have other jobs and cannot always attend practices. The men's basketball and wrestling coaches indicated that they needed more coaches, or full-time assistants, because the current assistants are not always available for practices and competitions.

Generally, male and female athletes interviewed and surveyed by OCR were satisfied with the availability of their coaches, although some female athletes noted that their coaches' other University jobs sometimes prevented the coaches from attending practices or being on time. OCR noted that the coaches of women's teams often had secondary job assignments that were not related to their coaching positions or that were related to athletics but were extremely time-consuming. For example, the former women's basketball coach said her assistant had a full time, 40-hour per week assignment as an admissions officer, in addition to being her team assistant coach. Athletes on her team noted that the assistant had to miss several practices and sometimes could not attend competitions because she had to travel. There were no similar complaints about her counterpart on the men's team. The former women's basketball coach was the Sports Information Director (SID), which all men's and women's coaches noted should be a full-time job. Another women's head coach was an assistant coach on another team, and also assisted the SID.

The Policy Interpretation lists two factors to be assessed in evaluating the assignment of coaches: 1) training, experience, and other professional qualifications, and 2) professional standing.

For the 2018-19 academic year, among teams that do not share coaches, the coaches of men's teams had coaching experience at the University ranging from 1 to 23 years and an average of 4.1 years coaching experience at the University and the women's teams had 7 (non-ceremonial)¹³ coaching positions, with coaching experience at the University for those in these positions ranging from 2 to 10 years and an average of 4.1 years coaching experience at the University.

The Policy Interpretation lists seven factors to be assessed in evaluating the compensation of coaches: 1) rate of compensation (per sport, per season); 2) duration of contracts; 3) conditions relating to contract renewal; 4) experience; 5) nature of coaching duties performed; 6) working conditions; 7) other terms and conditions of employment.

¹² The Complainant indicated to OCR that there were not enough female coaches assigned to teams. OCR did not investigate the gender of the coaches assigned to men's and women's teams because the focus of Title IX and its implementing regulation is on the benefits and opportunities provided to athletes, and not the sex of the coaches.

¹³ One women's volleyball assistant coach works under a ceremonial contract and is responsible for the morale of the team.

The following table delineates the coaching salaries for 2018-19 for men’s and women’s teams that did not share coaches:

Men’s Head Coaches	Salaries	Women’s Head Coaches	Salaries
basketball	\$51,500.00	basketball	\$30,000.00
football	\$114,554.00	softball	\$37,827.00
wrestling	\$25,500.00	volleyball	\$10,930.00
Total	\$191,554.00	Total	\$78,757.00

For the 2018-19 academic year, 207 male and female athletes participated on teams (men’s and women’s basketball, football, softball, wrestling, and volleyball) that did not share head coaches. Of these 207 athletes, men were 153 or 73.9% of the athletes and received 70.9% of the non-shared coaches’ salaries, while women were 54 or 26.1% of the athletes and received 29.1% of the non-shared coaches’ salaries.

One women’s head coach was an assistant coach on another team, and also assisted the former SID. She stated that her salary was cut by \$7,000 when she became the assistant to the SID, although she said the job entailed a lot of work. Another coach said that she has significant duties for which she was undercompensated and she needed an assistant. No men’s or women’s coaches suggested that the quality of their coaching is adversely affected by the size of their salaries.

Prior to OCR’s making a determination with respect to this component, the University signed the enclosed Agreement to resolve this component.

Availability, Assignment and Compensation of Tutors - 34 C.F.R. § 106.41(c)(5) & (6)

The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of tutoring: (1) the availability of tutoring; and (2) procedures and criteria for obtaining tutorial assistance. The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the assignment of tutors: (1) tutor qualifications; and (2) training, experience, and other qualifications. The Policy Interpretation also lists five factors to be assessed to determine whether a recipient provides equal opportunities in the compensation of tutors: (1) hourly rate of payment by nature of subjects tutored; (2) pupil loads per tutoring season; (3) tutor qualifications; (4) experience; and (5) other terms and conditions of employment.

According to documentation provided by the University as supported by testimony from coaches and male and female athletes, the University monitors the academic progress of all student-athletes. The University offers individual-subject tutoring to all students, including student athletes, free of charge. The University’s Tutoring and Peer Mentoring Center (Center) is responsible for tutoring services for all students. Students can schedule appointments with tutors

on-line.¹⁴ The Center employs 12 student tutors. Tutors are trained according to standards from the College Reading & Learning Association,¹⁵ an organization devoted to excellence in tutoring and mentoring at the college level. OCR observed no differences on the basis of sex concerning the compensation provided to the tutors of male and female athletes. Student athletes reported to OCR that the tutoring was of good quality.

OCR found no disparities on the basis of sex in the procedures and criteria that must be followed by athletes to obtain tutorial assistance or the qualification of the tutors assigned to male and female athletes. As such, OCR has determined that there is insufficient evidence to conclude that the University has failed to provide equivalent opportunities to male and female athletes in the provision of tutoring, as required by 34 C.F.R. § 106.41(c)(5) & (6).

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: (1) the quality and availability of the facilities provided for practice and competitive events; (2) the exclusivity of use of facilities provided for practice and competitive events; (3) the availability of locker rooms; (4) the quality of locker rooms; (5) the maintenance of practice and competitive facilities; and (6) the preparation of facilities for practice and competitive events.

In assessing the University's compliance with respect to this component, OCR reviewed the University's locker rooms, team room, and practice and competitive facilities during an on-site visit in 2018. The majority of the University's athletics facilities are located on the main campus, with the exception of the softball practice and competitive field, and the golf course, which are located a short distance from the main campus, and the rodeo competitive arena, which is located at the county fairgrounds four miles from campus.

The table on the following page shows the practice facility, competitive facility, and locker room for each team.

¹⁴ <https://www.dickinsonstate.edu/student-services/student-resource-and-opportunity-soar-center/tutoring-and-peer-mentoring-center/>

¹⁵ <https://www.crla.net/>

Locker Rooms and Practice Facilities, Competitive Facilities 2018-19

Team	Practice Facility	Competition Facility	Locker Room
Football	Biesiot Activity Center (BAC)	BAC	BAC
Softball	North Softball Complex and Wienbergen Hall	North Softball Complex	Scott Gym
men’s basketball	Scott Gym	Scott Gym	Scott Gym
women’s basketball	Scott Gym	Scott Gym	Scott Gym
Volleyball	Scott Gym	Scott Gym	Scott Gym
Wrestling	Wienbergen Hall	Wienbergen Hall	Scott Gym
outdoor track & field	Huffman Track at BAC	Huffman Track at BAC	BAC
indoor track & field	Wienbergen Hall	Wienbergen Hall	BAC
cross-country	BAC	BAC	BAC
Rodeo	Campus arena (indoor)	Stark County Fair Grounds	Agriculture building
Golf	Heart River Golf Course	Heart River Golf Course	N/A

Athletes in all sports except softball expressed no concerns about the quality of their facilities.

The following teams practice in the same facility in which their competitions are held: football, softball,¹⁶ wrestling, volleyball, men’s and women’s basketball, men’s and women’s golf, and men’s and women’s indoor/outdoor track & field.

The softball team has a practice field and competitive field located a few blocks from campus at the North Softball Complex (Complex). The Complex has four diamonds that are the appropriate size and specification. The fields have enclosed dugouts, batting cages, and six fast pitch bullpen mounds. The softball coach and athletes reported that the fields are not well maintained and are not for the exclusive use of the softball team; they are also used by a high school softball team, youth softball leagues, and youth football leagues. The athletes reported the grass on the competitive field is thick, bumpy, and has a hole in the outfield. The quality of the Complex is poor. When the softball team practices indoors it uses the gym at Wienbergen Hall. The gym has wooden flooring, which the softball athletes reported is not appropriate for hitting practice.

With the exception of softball, each venue has amenities for spectators (adequate seating, scoreboards, restrooms, and concessions).

The softball coach reported the dugouts are the worst dugouts in their conference, there is limited spectator seating and spectators bring their own chairs, the public restrooms are not always unlocked, and there is not adequate bullpen space. The softball team does not have locker rooms adjacent to its practice/competitive facility; the locker rooms are located a few blocks away at Wienbergen Hall.

¹⁶ The softball team practices indoors at Wienbergen Hall when there is inclement weather.

Eighteen (14%) of the University's female athletes (softball) and no male athletes had poor practice or competition facilities during the 2018-19 academic year.

No athletes have locker rooms in poor condition. The football locker room is new and large with wooden lockers, a television, a video board, meeting rooms, team graphics, a training room, a weight room, video games, the coach offices, and a food station. The women's basketball locker room has a big screen television, plush chairs, team graphics/logos, carpeting, awards/champions boards. The men's basketball locker room is similar to the women's locker room with a television, team graphics/logo, carpeting, awards/champions boards. It also has video games.

A total of 126 (55%) male athletes (football, basketball) and 14 (10.9%) female athletes (basketball) had "excellent" locker rooms. Four (2%) male athletes (men's golf) and six (5%) female athletes (women's golf) have no locker room.

The football team has a new "football performance center" which houses a new weight room, locker room, equipment room, athletic medicine room, offices, position meeting rooms, large team meeting rooms and a new indoor football practice facility. The football team has a video/film area.

While 110 (48%) male athletes (football) have a team room separate from their locker room, no female athletes have a separate team room.

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

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

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

The University does not have physicians on campus. There are campus health services for all students through the University Nurse who is available during specified hours to meet student needs. All student-athletes, with the exception of rodeo athletes, are required to have annual medical exams at their own expense.

The University requires that all student athletes provide proof of health insurance as a condition of participation in University athletics. The University does not carry any type of personal injury or health insurance coverage for students, including student athletes.

There are two training facilities for student athletes on the University campus. The main training room for all athletes is located in the lower level of Wienbergen Hall. Student athletes rated the

training room as good; some student athletes complained that the training room lacked equipment, such as bikes and treadmills.

There is a second full training room at the BAC, which is open during the football season. The training room is available for all student athletes; due to its location it is primarily used by student athletes whose practice and competitive facilities are at the BAC: football, outdoor track and field, and cross-country. Student athletes rated the training room as good.

The training rooms are available both for appointments and on a drop-in basis. The two training rooms were of comparable size. The main training room has one ice bath and the training room at the BAC has two ice baths. The training rooms have free weights and other exercise equipment such as exercise balls and foam rollers, storage areas of various sizes, sinks, ice machines and office space.

The Ben C. Frank Human Performance Center (Center) is the main weight and conditioning area for all student athletes and is located in the lower level of Wienbergen Hall. The schedule for the Center is set by the Director of the Center. No student athletes or coaches complained about the availability of the Center. The Center contains tread mills, free weights, power lifting stations, plyometric platforms, bench press stations, squat rack platforms, and other machines. Athletes from all teams rated the Center as poor or average due to its small size and outdated equipment.¹⁷

The University reported that student athletes can also utilize the University's Fitness Center available to all students in the University Student Center. The Fitness Center has tread mills, stationary bikes, elliptical machines, and dumbbell weights.

There are two full-time trainers for all of the student athletes; the head trainer has been in his position for 19 years, and a second full-time trainer started in fall 2018. The trainers are certified by the National Athletic Trainers' Association Board of Certification. There are also 12 part-time student trainers who are not certified.

All teams have a trainer present at home competitions. Football athletes and coaches reported the head trainer was present at all football practices and the head trainer always travels with the football team. Athletes and coaches for wrestling, men's and women's basketball, softball, volleyball, outdoor and indoor track, and cross-country reported that a trainer was "sometimes" available at practices and never traveled with the teams. The men's and women's golf and rodeo teams did not receive any services from the trainers.

The majority of the athletes and coaches reported no issues with the availability of trainers and reported that trainers are usually available by appointment and drop-in basis.

Based on the foregoing, OCR has determined that the evidence is insufficient to conclude that the University has failed to provide equivalent opportunities to male and female athletes in the provision of medical and training facilities and services, as required by 34 C.F.R. § 106.41(c)(8).

¹⁷ The University announced in June 2019 that the weight room will be renovated with the replacement of the flooring, ceiling, walls, and sound system and installation of state-of-the-art equipment. The University informed OCR that this renovation was completed in October 2019.

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

The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of housing and dining facilities and services: (1) housing provided; and (2) special services as part of housing arrangements (e.g., laundry facilities, parking spaces, maid service).

The University operates two residence halls on campus and one apartment complex adjacent to campus. The University offers a variety of meal plans for students living on and off campus. The University does not provide any exclusive housing and dining services to student athletes. The University reported it attempts to place new student athletes who are on the same athletic team together in a residence hall room.

Athletes who are required to arrive on campus prior to the start of the fall semester or remain on campus during winter break due to their team obligations told OCR they stay in their residence hall and that dining services are available. Athletes who do not reside in the residence halls said they stay in their off-campus housing and coaches provide them assistance with meals if they do not have a meal plan.

There are no special housing amenities provided to athletes.

Based on the above, OCR determined that there is insufficient evidence to conclude that the University has failed to provide equivalent opportunities to male and female athletes in the provision of housing and dining services, as required by 34 C.F.R. §106.41(c)(9).

Publicity - 34 C.F.R. § 106.41(c)(10)

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

The former University's women's basketball coach¹⁸ held a dual role as the SID responsible for maintaining statistics for every sport, media, press releases, game day management, maintaining and contributing to the athletics website at <http://www.dsubluehawks.com>, as well as the NAIA and NSAA websites. The SID had an assistant SID, who was also the head volleyball coach and assistant coach for track and field. The SID stated that she was overextended. She stated that all other athletics programs in the conference have a full-time SID and full or part time assistant.

Coaches of men's teams characterized the quality of the publicity services as poor to average. One coach noted that there is no full time SID, which puts the responsibility for publicity on the coaches, which is "a full-time job." Another coach said he has to do all the publicity work and

¹⁸ The coach/SID resigned her position in 2019 to coach at a different college.

does “the best” he can. He confirmed that the SID managed the website. Male athletes rated the publicity as average to excellent.

Coaches of women’s teams rated the quality of publicity services as average. One coach stated that all publicity is centered around football with much more newspaper coverage going to football than other sports. Another coach stated that her team gets radio and television coverage only if it fits within the schedule and gets very little newspaper coverage. Female athletes characterized their publicity as good, average, or excellent.

The University provided men’s and women’s teams with printed rosters, seasonal media guides and pocket schedules covering fall, winter and spring men’s and women’s sports, and men’s and women’s team posters with schedules.

Men’s coaches reported that the University broadcasts certain games on radio and television and via live streaming on the internet. Football and basketball coaches indicated that game scores and team member stories are covered by newspapers, and all coaches indicated that scores and team member stories are covered on the University’s web page or via social media. Women’s coaches reported that the University broadcasts certain games on radio and television and that game scores and team member stories are covered by newspapers and on the University’s web page or via social media.

The athletics web page has links to all men’s and women’s teams and to Facebook, Twitter, Instagram, and YouTube. All teams other than football reported that they managed their teams’ social media. The football coach said he had help from the former SID with his team’s social media.

In addition, on the athletics website each individual men’s and women’s sport also had links to their roster, schedule, news, and social media.

None of the sports have individual Instagram links although the University has an Instagram page. There is a YouTube link that focuses on a show called “Hawk Talk,” which is about University’s men’s and women’s athletics programs. Coaches and athletes of men’s and women’s teams, including the former SID, expressed concerns about the quality of publicity provided to teams, including via social media.

While there is a deficiency in publicity overall, OCR found no significant disparity on the basis of sex in the provision of publicity services to athletes. Therefore, OCR determined that the evidence is insufficient to establish overall that the University has failed to provide an equivalent opportunity to males and females in the opportunity to receive publicity, as required by 34 C.F.R. § 106.41(c)(10).

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

The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the provision of support services: (1) the amount of administrative assistance provided to men’s and women’s programs; and (2) the amount of

secretarial and clerical assistance provided to men's and women's programs. The complaint filed with OCR was silent on any issues or concerns related to the University's provision of support services.

There is one administrative assistant for the Athletics and Physical Education and Health Department who provides all secretarial and clerical support for men's and women's intercollegiate athletic programs. Otherwise, men's and women's head and assistant coaches did their own support work. Head coaches had offices and the offices appeared to be similar for men's and women's teams.

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

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

The Policy Interpretation lists three factors to be assessed in determining whether a recipient provides equal opportunities in the recruitment of student athletes: (1) whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit; (2) whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program; and (3) whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

In 2017-18, the last year for which OCR has financial figures, the University budgeted \$42,500 for recruiting, with \$25,250 (59.4%) assigned to men's teams and \$17,250 to women's teams (40.6%).¹⁹ According to the University, the final expenditures for recruiting that year totaled \$23,898, or 56.2% of the budgeted amount, with \$15,713 (65.8%) being spent by men's teams and \$8,185 (34.2%) spent by women's teams. Coaches of men's and women's teams indicated that their spending on recruiting was limited due to budgetary concerns.

According to the University, all head and assistant coaches participate in recruiting and they recruit in the University's "core" geographic areas: North Dakota, Montana, Wyoming, South Dakota, California, and Arizona. Most men's and women's coaches indicated that they recruited via phone, text, and email, although they indicated that they traveled to recruit at state high school games and other competitions.

Male and female students indicated that they were typically recruited by their coaches, and male and female students surveyed by OCR stated that they visited the campus as part of being recruited. Coaches indicated that the University provides hotel rooms for recruiting purposes and it supplied OCR with a list of hotel rooms used for men and women being recruited. Most male athletes indicated that they received a tour and meals while being recruited, and many received a

¹⁹ In calculating these amounts, OCR split the budget for co-ed teams or teams such as track and field and cross-country and golf, which share a coach.

hotel room and some tickets to a competition on campus. Female athletes indicated that they were also provided a hotel room, meals, and sometimes tickets to events.

While men's teams were provided more money in the aggregate for recruiting than women's teams, OCR did not obtain information to indicate that this resulted in a denial of equal opportunity overall in recruiting. Accordingly, OCR determined there is insufficient evidence to conclude that the University has failed to provide equal opportunity in the provision of recruitment of student-athletes, as required by 34 C.F.R. § 106.41(c).

Conclusion

OCR found insufficient evidence of a violation in six component areas: opportunity to receive academic tutoring and compensation of tutors, provision of medical and training facilities, provision of housing and dining facilities and services, provision of publicity services, provision of support services, and recruiting. The University signed an Agreement to resolve the remaining seven areas. Under the Agreement, the University agreed to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the accommodation of athletic interests and abilities, athletic financial assistance, provision of equipment and supplies, scheduling of competitions and practices, provision of travel and per diem allowances, opportunity to receive coaching, and provision of locker rooms and practice and competitive facilities. OCR will monitor the University's implementation of the Agreement.

This concludes OCR's investigation of the complaint and 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.

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

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

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

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

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

We wish to thank you and University personnel for the courtesy and cooperation extended to OCR during the investigation. This complaint is closed effective the date of this letter. If you have any questions or concerns, you may contact Emily Martin, Senior Equal Opportunity Specialist, at 312-730-1505 or by email at Emily.Martin@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure