



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

230 SOUTH DEARBORN, 37TH FLOOR
CHICAGO, IL 60604

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

June 19, 2019

Dr. Randy Pembrook
Chancellor
Southern Illinois University – Edwardsville
P.O. Box 1151
Illinois State Route 157
Edwardsville, IL 62026-1001

RE: OCR # 05-16-6001

Dear Dr. Pembrook:

This is to notify you of the completion of case resolution activities by the U.S. Department of Education, Office for Civil Rights (OCR), in connection with the above-referenced compliance review conducted at Southern Illinois University-Edwardsville (University).

Specifically, OCR's compliance review examined whether the University discriminates against students on the basis of sex by denying them an equal opportunity to participate in intercollegiate athletics, in awarding athletic scholarships or grants-in-aid, and in all other program areas, including the provision of equipment and supplies, the scheduling of games and practice time, the provision of travel and per diem allowances, the opportunity for coaching and academic tutoring, the assignment and compensation of coaches and tutors, the provision of locker rooms and practice and competitive facilities, the provision of medical and training services and facilities, the provision of housing and dining services and facilities, the provision of publicity, the recruitment of student athletes, and the provision of support services.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 - 1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination based on sex in education programs or activities operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX and its regulation.

Legal Standards

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

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

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.”

Consistent with the regulations and the Intercollegiate Athletic Policy Interpretation (Policy Interpretation)¹ issued December 11, 1979 (44 *Fed. Reg.* 71413 *et seq*), 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. Further, OCR determined 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)); travel and per diem allowances (34 C.F.R. § 106.41(c)(4)); scheduling of games and practice times (34 C.F.R. §106.41(c)(3)); opportunity to receive academic tutoring and assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); provision of locker rooms, practice and competitive facilities (34 C.F.R. §106.41(c)(7)); provision of medical and training facilities and services (34 C.F.R. § 106.41(c)(8)); provision of housing and dining facilities and services (34 C.F.R. § 106.41(c)(9)); provision of publicity (34 C.F.R. § 106.41(c)(10)); provision of support services (34 C.F.R. § 106.41(c)); and recruitment of student-athletes (34 C.F.R. § 106.41(c)).

Background

The University is a state university located in Edwardsville, Illinois, approximately 25 miles northeast of St. Louis. In the 2016-2017 academic year, the University’s full-time undergraduate student enrollment was 11,720 students, with 5509 male students (47.0 %) and 6211 female students (53.0%).

In 2016-2017, the University offered eight intercollegiate men’s sports: baseball, basketball, cross-country, golf, soccer, track and field (indoor and outdoor), and wrestling; in 2016-2017, the University offered eight intercollegiate women’s sports: basketball, cross-country, soccer, softball, 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 and in the Ohio Valley Conference (OVC).²

¹<http://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>

² The University’s men’s soccer team is a member of the Missouri Valley Conference.

Accommodation of Athletic Interests and Abilities

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.

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.

In 2016-2017, women represented 311, or 43.8%, of the 299 athletes, compared to their enrollment proportion of 53.0%. This disparity represented as many as 58 additional female participation opportunities that would have been necessary to add to achieve proportionality, without cutting any athletic opportunities for men. This disparity was larger than the average size of women’s teams (16).

The University provided information indicating that, among current sports, it added women’s basketball, cross-country, softball, tennis, and track & field between 1973 and 1979, women’s soccer in 1982, volleyball in 1995, and women’s golf in 1998. The University eliminated women’s golf in 2016 due to budget issues in the state of Illinois; according to the University, eight women participated on the golf team the final year before it was eliminated. The University’s athletic website³ indicates that the University offers the same men’s and women’s sports in 2018-2019 as in 2016-2017.

According to the University, it does not have a published procedure to request the addition or elevation of a sport to intercollegiate status. The University indicated in 2016 that it has not received any requests for the addition or elevation of a sport to intercollegiate status. The University also indicated that it had not conducted any surveys or assessments during the previous three years to gauge current and/or incoming students’ athletic interests and abilities.

³ <https://www.siuecougars.com/landing/index>

The NCAA and the OVC sanction competition and offer championships in several women's sports; the only sport the OVC sponsors for women that the University does not offer is golf. The University's website⁴ lists 11 men's club sports and five women's club sports, many of which are already offered by the University as intercollegiate sports.

The University's Athletic Director (AD) informed OCR that adding sand volleyball as a women's sport that was under consideration, as five OVC members had added or were considering adding this women's sport. During OCR's onsite, the sports identified by athletes in which there may be interest were football and men's hockey, as well as the reinstatement of men's tennis and women's golf.

OCR assesses the following two factors 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 that sex.

In 2016-2017, the only sports that competed in less than 100% of their competitions against Division I teams were men's basketball, which had two games against non-Division I teams, women's basketball, which had one game against a non-Division I team, and softball, which had three games against non-Division I teams. Men's and women's team coaches indicated that they rarely compete against non-Division I teams, except in occasional off-season competitions or at multi-team competitions where a single non-Division I team may be competing.

OCR determined that, with respect to the levels of competition, the University's 2016-2017 competitive schedules for men's and women's teams, on a program-wide basis, afforded proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities. OCR found that, with respect to the selection of sports, in 2016-2017, females were underrepresented in the University's athletics program, there was no history and continuing practice of program expansion that is demonstrably responsive to the developing interests of females, and there was sufficient unmet interest, ability and available competition for the University to offer an intercollegiate women's golf team. OCR has not obtained data from subsequent academic years. Prior to OCR making a finding, the University agreed to take the steps outlined in the enclosed Resolution Agreement (Agreement) to ensure that it provides male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities.

⁴ <http://www.siue.edu/campus-recreation/sports/club/clubs.shtml>

Athletic Financial Assistance

Post-secondary institutions are not required to grant the same number of scholarships to men and women, nor must they award individual scholarships of equal value. Instead, 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 explained by legitimate, nondiscriminatory factors including, but not limited to: unexpected fluctuations in the participation rates of males and females, actions taken to promote athletic program development, or differences between in-state and out-of-state tuition.

In accordance with NCAA Division I rules,⁵ 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. 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.

Athletics grant-in-aid consists of tuition, student fees, and room and board.⁶ Partial athletic scholarships cover varying portions of tuition, room and board and student fees. 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.

For the 2016-2017 academic year, athletes received a total of \$2,280,754 in AFA, with men receiving \$1,100,396 and women receiving \$1,180,358. An unduplicated count⁷ revealed that there were 238 total athletes on the University's teams in 2016-2017; female athletes were 102, or 42.9%, of these athletes and male athletes were 136, or 57.1%, of these athletes. The female athletes received 51.8% of AFA while the male athletes received 48.2% of AFA.

During 2016-2017, the difference between the participation proportion and the AFA proportion was 8.9 percentage points favoring women. OCR did not request and the University did not provide any legitimate, nondiscriminatory factors to explain the disparity, and OCR has not obtained data from subsequent academic years. Prior to OCR making a finding, the University agreed to take the steps outlined in the enclosed Agreement to ensure that it provides male and female students an equal opportunity to receive athletic financial assistance.

⁵See, NCAA by-law 15 at <http://www.ncaapublications.com/productdownloads/D118.pdf>

⁶According to the University, in 2016-2017, in-state tuition was \$278.40 per credit hour and out-of-state tuition was \$334.08 per credit hour, total fees for 15 hours were \$1133.90 per semester, room rates were \$5820 per year for a residence hall shared room and \$6180 per year for an evergreen hall shared apartment, and two meals plans were offered to all students, costing \$3360 per year or \$4640 per year.

⁷For calculating the number of athletes who participate in intercollegiate athletics for purposes of determining the allocation of AFA, OCR uses an unduplicated participation count of athletes, i.e., athletes who participate in one or more sports are counted only once no matter how many sports they play.

Other Component Areas

OCR evaluates compliance with each of the remaining program components 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, e.g., if a men's team received a superior benefit in some way, OCR considers whether the benefit provided to the men's program was offset by an unmatched benefit to any of the teams in the women's program. In making this program-wide comparison, and before OCR concludes that a benefit to one of the teams in the women's program offsets a benefit provided to one of the teams in the men's program, OCR considers whether the offsetting benefits were equivalent or equal in 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.

Equipment and Supplies

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.

Some athletes raised concerns regarding equipment and supplies. Specifically, women's cross-country athletes indicated the equipment they are provided is substandard, although they said new equipment was supposed to be coming in soon. Women's track athletes said many travel bags lack handles. Women's track athletes said the uniforms are not the correct sizes; OCR's visual examination of equipment could not confirm or contradict this assertion. Women's tennis athletes indicated that they have to wait a long time to get equipment from Adidas, the company

with which the University contracts for the provision of uniforms and other equipment and supplies.

Athletes from the women's track, cross-country, and tennis teams, which together compose 41.2% of female athletes, identified concerns with the equipment and supplies provided to their teams in 2016-2017. OCR did not request and the University did not provide any legitimate, nondiscriminatory factors to explain the disparities in equipment and supplies identified by athletes, and OCR did not obtain data from subsequent academic years. Prior to OCR making a finding, the University agreed to take the steps outlined in the enclosed Agreement to ensure that it provides male and female students an equal opportunity in the provision of equipment and supplies.

Scheduling of Games and Practice Time

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

In 2016-2017, women's teams competed in 173 competitive events, 94.5% of the maximum of 183 allowed by the NCAA in the sports it offered, while men's teams competed in 156 events, 91.8% of the maximum of 170 allowed by the NCAA in the sports it offered.

All men's and women's teams held regularly scheduled in-season practices, generally from 1½ to 3 hours per day during the sport's season. The lengths of practices for similar men's and women's teams were comparable.

For men, 40 of the 56 home events, or 71.4%, were in primetime; for women, 49 of the 61 home events, or 80.3%, were in primetime. Primetime for athletic competitions was been defined as evenings⁸ that precede days without classroom instruction, as well as weekend afternoons.

Several men's and women's teams and individual athletes have qualified and competed in NCAA-sponsored post-season events, including in men's and women's soccer, women's tennis, men's track and wrestling. Several men's and women's teams participated in exhibition competitions in pre-season and/or the off-season. All teams that have qualified for post-season competition have been able to participate, and no teams were prevented from engaging in pre-season competitions.

OCR identified no disparities on the basis of sex in the number and length of practice opportunities; the time of day that practice opportunities are scheduled; the number and length of practice opportunities; and the opportunities to engage in pre-season and post-season competition for the 2016-2017 academic year. OCR observed slight disparities favoring women in the number

⁸ Evenings for the purposes of this evaluation were viewed as times being 4:00 p.m. and later.

of NCAA allowable competitions and in the scheduling of prime time home contests. OCR, however, also noted that men's and women's teams have robust competitive schedules.

Further, OCR observed that in the high profile sport of basketball, men play significantly more home contests than women on Friday night or Saturday. As noted above, while the difference in competitive events favors women (80% vs 71%), this disparity is offset by an unmatched benefit in primetime scheduling of basketball games that favors men. On this basis, OCR finds insufficient evidence to conclude overall that the University has failed to provide males and females an equivalent opportunity in scheduling of games and practice time, as required by 34 C.F.R. § 106.41(c)(3).

Travel and Per Diem Allowance

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

The AD said the athletic department owns three vehicles, two coaches and one "turtle top" conversion van; he said that the University leases a coach bus when too many teams are traveling at once, which he said typically occurs five or six weekends each spring.

In 2016-2017, University athletic teams traveled to play away events nationally, but primarily in the Midwest and south. Men's teams drove to 52 of 56, or 92.9%, of the away competitions, while women's teams drove to 65 of 70, or 92.9%, of their away competitions.

Men's teams stayed overnight for 36 of 56 trips (64.3%), while women's teams stayed overnight for 50 of 70 trips (71.4%). Almost all of the instances of teams not staying overnight were for competitions in Illinois and Missouri. The coaches and athletes generally indicated that the team stays in mid-level quality hotels. In 2016-2017, men's teams stayed after their competitions on 23 occasions and women's teams did so on 10 occasions; the post competition overnights were in locations that were far away from campus.

The per diem rates of \$28 a day for in-state travel and \$32 a day for out-of-state travel apply equally to men's and women's sports. Coaches indicated that teams rarely provide per diem payments to athletes, but instead usually eat meals together while on the road, at moderately priced restaurants. Testimony indicated that all teams eat at similar quality restaurants.

OCR determined there were no significant disparities on the basis of sex in the modes of transportation as 92.9% of women's and men's sports drove to away competitions. OCR determined that both men and women stayed in mid-level quality hotels, arriving often the day before a competition, and receiving the same per diem allowance. Men's teams stayed after competitions more often than did women's teams, based on the time of day of the competition and the distance from campus. OCR also determined that usually teams eat together at moderately priced restaurants. Therefore, there is insufficient evidence to conclude that the

University has failed to provide an equivalent opportunity in the travel and per diem allowances, as required by 34 C.F.R. § 106.41(c)(4).

Opportunity to Receive Tutoring and the Assignment and Compensation of Tutors

The Policy Interpretation lists two factors to be assessed in determining whether a recipient provides equal opportunities in the opportunity to receive academic 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 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 the University, tutors are hired through the normal University student-employment process and tutors are assigned to student-athletes based on need defined by their athletic academic advisor or by the student. Tutors are not assigned to teams/genders and do not travel with teams. The University indicated that all tutors are normally at least in their junior year and have earned a grade of “A or B” in the course they are hired to tutor. The University also indicated that the starting hourly rate of tutors is \$8.25 per hour. Coaches and athletes did not express any concerns about tutoring.

OCR determined that there were no disparities on the basis of sex in the opportunity to receive academic tutoring, as tutors are assigned to student-athletes based on need and offered to all student athletes. OCR also determined that the tutors have the same starting hourly rate. Therefore, there is insufficient evidence to conclude that the University has failed to provide an equivalent opportunity in the opportunity to receive academic tutoring and assignment and compensation of tutors, as required by 34 C.F.R. § 106.41(c)(5) & (6).

Opportunity to Receive Coaching and Assignment and Compensation of Coaches

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

Data provided by the University indicated that the athlete to coach ratio in 2016-2017 was 8.2 in men's sports and 6.2 in women's sports, excluding track and cross-country, in which men and women shared coaches. For the 2016-2017 academic year, all male and female athletes had a head coach and all sports except men's golf and women's tennis had at least one assistant coach; the lack of an assistant affected 5.4% of the men and 5.3% of the women.

Men's cross-country athletes said they could use an extra coach in their sport, and women's tennis athletes said that one coach is not enough but that when a volunteer coach is also present they have a sufficient amount of coaching. Women's track athletes said they could use a sprint coach. Softball athletes said that they need two coaches at all times and it is problematic if one coach is absent for any reason.

For the 2016-2017 academic year, the head coaches of men's teams that did not share a coach with women's teams had coaching experience ranging from 9 to 15 years, with an average of 12 years. The head coaches of women's teams that did not share a coach with men's teams had coaching experience ranging from 10 to 33 years, with an average of 21 years.

For the 2016-2017 academic year, the average salary of non-shared salaried full-time coaches in the men's program was \$59,223 and in the women's program it was \$53,240. With respect to head coaches, the average salary for non-shared head coaches for the men's program was \$87,380 and for the women's program was \$74,983. The University spent \$1,480,977 total salary compensation for its non-shared coaching staff. Of that, \$778,860 (52.6%) was earned by head and assistant coaches of men's teams, and \$702,117 (47.4%) was earned by head and assistant coaches of women's teams.

There are three sets of comparable male and female sports that do not share coaches. On average, the men's basketball salaried coaches received \$11,450 more in salary than the women's basketball salaried coaches, the men's soccer salaried coaches received \$19,197 more in salary than the women's soccer salaried coaches, and the softball salaried coaches received \$17,160 more in salary than the baseball salaried coaches.

For the 2016-2017 academic year, the evidence revealed that the average duration of contracts for salaried head coaches in the men's program was 3.4 years, and in the women's program was 4.8 years; this difference is a result of the fact that the softball head coach had a 10-year contract, while the contracts of other head coaches ranged from 3 to 5 years. Assistant coach contracts were mostly for one year, although three women's assistants had contracts of 1.5 years and one softball assistant had a two-year contract.

OCR determined that there were not significant disparities on the basis of sex with respect to the availability of coaches, assistant coaches and graduate assistants as each team, except men's golf and women's tennis, had a head coach and at least one assistant coach. OCR also determined that there were no significant disparities on the basis of sex with respect to the assignment of coaches as there was no evidence to suggest that the University routinely assigned coaches of less experience or qualifications to any particular sports team on the basis of the sex of the team members. OCR, however, did determine that there were disparities on the basis of sex with

respect to the compensation for its non-shared coaching staff as the coaches for the men's teams earned 52.6% of the total salary compensation and coaches for the women's teams earned 47.4% of the total salary compensation. However, the evidence did not establish that these disparities adversely affected female athletes. OCR did not identify any significant disparities in the duration of contracts as the average length of the contracts for head coaches was 3-5 years, except for the women's softball head coach, and the average length of the contracts for assistant coaches was 1 year.

Based on the above, the evidence is not sufficient to establish that male and female students were not provided an equal opportunity in the opportunity to receive coaching and the assignment and compensation of coaches, as required by 34 C.F.R. § 106.41(c)(5) & (6).

Locker Rooms and Practice and Competitive Facilities

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

The AD said the University has improved all of its facilities since 2005, and the University tries to design comparable men's and women's facilities to mirror one another, such as the men's and women's basketball locker rooms and the softball and baseball clubhouses. OCR noted during its on-site that the indoor softball facility and the main gymnasium were of excellent quality and that all other facilities were of good quality.

The coaches generally indicated that their practice and competition facilities were high quality and met their needs. The men's basketball coach noted that the court at the University fitness center, which is sometimes used for practice, is not regulation size; he said the men's and women's basketball teams use this facility at similar frequencies. The volleyball coach said the floor is slippery in the pre-season, but the University is working to address this issue.

Softball athletes noted that their indoor facility is better than any other in their conference and is better than many larger programs. Baseball athletes said the PA system does not work at their field and also noted that they could use a new batting cage and an indoor facility like that provided to softball, although they have periodic access to the softball facility. Men's and women's soccer athletes identified problems with the turf; women said the turf is getting hard and men said it needs to be replaced. Women's soccer athletes also said that by the end of the season, the practice facility gets bumpy. Women's tennis athletes said the courts are not accessible and are difficult to reach, and also do not have restrooms. The men's basketball, baseball, and soccer teams collectively represent 46.4% of all male athletes. The women's basketball, volleyball, soccer, and tennis athletes collectively represent 48.1% of all female athletes.

The men's and women's soccer and track and field teams share Korte Stadium, and the men's and women's basketball teams along with the wrestling and volleyball teams share the Vadalabene Center. The University indicated that the "availability of facilities for practice is based on in season and out of season priority and the expectation is that each coach will work out a practice schedule with others who share the facility. If a schedule is unable to be agreed upon, the Associate Director of Athletics/Facilities will develop an equitable plan to accommodate the sports involved given academic and travel schedules." Coaches and athletes expressed no concerns about the availability of facilities.

The University indicated that each sport except for cross-country, track, golf, and tennis has access to a designated sport-specific locker room that "is available during the time frame that each student-athlete participates within the program unless the Head Coach has limited the student-athletes' access based on a specific time frame or holiday." The University indicated that the sports that do not have a sport-specific locker room "have access and the opportunity to reserve a locker in the general Vadalabene Center locker rooms. Those locker rooms are open whenever the Vadalabene Center is open."

The women's soccer coach noted that a couple of players had to share lockers; the soccer team represents 20.6% of all female athletes. The coaches generally expressed no concerns about locker rooms, except that the baseball coach said the team's locker room needs more showers. The baseball team represents 20.2% of all male athletes, but the coach did not identify the number of additional showers needed. No athletes expressed concerns about the quality of locker rooms. OCR observed that the locker rooms were all of good quality.

The coaches and athletes expressed no concerns about the maintenance and preparation of facilities.

OCR determined that there were no significant disparities based on sex in the quality and availability of practice and competitive facilities as all comparable men's and women's teams share the same facilities except baseball and softball, which have similar amenities and were in excellent or good condition, and similar percentages of male and female athletes participate in sports about which there were complaints concerning the quality of facilities. OCR determined that the coaches work out the schedules and give priority to the sport in season. In addition, coaches and athletes expressed no concern about the quality, maintenance, or preparation of practice and competitive facilities. OCR also determined that there were no significant disparities based on sex in the availability of locker rooms as most teams had a sport-specific locker room, except for men's and women's cross-country and track, men's golf, and women's tennis, which all had access to the general public locker rooms. In addition, coaches generally expressed no concern about the quality of locker rooms and athletes expressed no concern about the quality of the locker rooms. The fact that a small number of women's soccer players have to share lockers is offset by the fact that the baseball team does not have enough showers.

Based on the above, there is insufficient evidence to conclude that the University has failed to provide an equivalent opportunity in the provision of locker rooms, practice and competitive facilities, as required by 34 C.F.R. §106.41(c)(7).

Medical and Training Facilities and Services

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 Head Athletic Trainer told OCR that the University does not employ a physician for athletics but that there is a physician at the University's health services offices, so trainers can sometimes consult with her.

The University indicated that all student-athletes are expected to have a primary insurance policy and are covered under a secondary accident policy provided by the University. The University also indicated that athletes who purchase the student health plan from the University are required to have a Sports Rider in addition to the regular plan.

The University indicated that all weight training and conditioning facilities are available to all athletes. Athletes confirmed that teams have scheduled access to the weight training facilities. The coaches and athletes expressed no concerns about the availability and quality of the weight training and conditioning facilities.

The Head Athletic Trainer told OCR that he, three full-time assistants, and two to three graduate assistants provide training services. All sports received 20 hours of coverage for practice segments and for all home competitive events during their competitive seasons and all sports except for men's and women's cross-country, men's golf, and women's tennis received training coverage for road competitions; cross-country received "selected road event coverage," while golf and tennis received no road event coverage. Five men's and five women's sports had trainers specifically assigned during their season, and the other sports had access to "general staff coverage." The Head Athletic Trainer said that the amount of training assigned is based on a risk assessment, with sports like basketball and soccer considered higher risks than golf and tennis. Coaches and athletes expressed no concerns about the availability and quality of trainers.

The volleyball coach noted that the Vadalabene training facility is below par, because it lacks a rehabilitation space. Male and female athletes alike noted that the weight training facility, which can be used by athletes in all sports, is too small.

OCR determined that there were no disparities on the basis of sex in the availability of medical and training facilities and services as all athletes had similar access to the same medical personnel and assistance; the same access to health, accident and injury insurance coverage; and the same access to weight and conditioning facilities. OCR also determined that the women's and men's teams have similar access to the athletic trainers while they travel. Therefore, there is insufficient evidence to conclude that the University has failed to provide an equivalent opportunity in the provision of medical and training facilities and services, as required by 34 C.F.R. § 106.41(c)(8).

Housing and Dining Facilities and Services

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).

There is no specific athletic housing at the University. According to the University, athletes are “allocated residence hall rooms in the same manner as the general student population” and “are spread out throughout the various University living facilities.” The University indicated that the athletic department coordinates selection of roommates through the University’s housing office. Athletes indicated that they typically room with teammates and expressed no concerns about the housing provided.

The University indicates that it does not provide special dining facilities for athletes, as there is only one dining facility on campus. The University indicated that if a team is on campus when University dining facilities are closed, “teams provide meals from restaurants or purchases groceries to make team meals.”

The University indicated that no athletic teams provide training table meals, but that the men’s basketball, women’s basketball, men’s soccer, and volleyball teams have pre-game meals; the meals for the volleyball team are only in advance of Saturday games. Athletes expressed no concerns about the dining arrangements.

OCR determined that there were no disparities on the basis of sex in the provision of housing and dining services, as there is no specific athletic housing or special dining facilities for athletes. Therefore, there is insufficient evidence to conclude that the University has failed to provide an equivalent opportunity in the provision of housing and dining services and facilities, as required by 34 C.F.R. § 106.41(c)(9).

Publicity

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 University indicated that it “provides a wide array of publicity vehicles to all athletics teams,” including press releases from the Sports Information Department before and after competitions, notification to local media of competition results, posting of previews and game stories on the athletics website,⁹ use of social media, and a monthly free newspaper entitled *Cougar Connection* highlighting all University athletics teams. The Sports Information Director

⁹ www.siuecougars.com

(SID) told OCR that he and one other full-time employee in Sports Information divide up the sports.

The SID said publicity services include updating the website daily, providing statistical help, writing game stories that go on the website, and writing features. The SID said they also have special events that they try to publicize more, such as post-season events or events to which they can attract more fans because of a rivalry.

The University indicated that it provides schedule posters and cards, game day programs, the *Cougar Connections* newspaper, elevator schedules, a visiting team guide, schedule magnets, and season ticket information and brochures.

Athletes in several sports, including baseball, wrestling, softball, and women's track, indicated that home competitions are not publicized well enough. The baseball and wrestling teams make up 37.5% of all male athletes, while the softball and indoor and outdoor track teams make up 45.8% of all female athletes.

The University indicated that in addition to its athletics web page referenced above, the athletic department and every athletic team had a presence on one or more social media platforms. Women's basketball athletes said the men's basketball games are promoted more on social media than are the women's basketball games. The women's basketball team makes up 9.9% of all female athletes.

OCR determined that there were no significant disparities on the basis of sex regarding the availability and quality of sports information personnel as there are two sports information employees who divide all the sports amongst themselves. In addition, OCR determined that the quantity and quality of publications and other promotional devices were similar. However, athletes in several sports, representing 45.8% of female athletes and 37.5% of male athletes, expressed concerns with their publicity, and the women's basketball athletes identified concerns regarding the relative promotional use of social media provided to their team compared to the men's basketball team. OCR did not request and the University did not provide any legitimate, nondiscriminatory factors to explain the disparities identified through athlete testimony, and OCR has not obtained data from subsequent academic years. Prior to OCR making a finding, the University agreed to take the steps outlined in the enclosed Agreement to ensure that it provides male and female students an equal opportunity in the provision of publicity.

Support Services

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 University indicated that it does not fund administrative support for any teams, except for men's and women's basketball; the University reported that the basketball programs "are

provided support in the form of a graduate student manager or part-time director of operations, at the discretion of the head coach.” The University indicated that it does not fund secretarial or clerical support for any team. One clerical staff member serves all teams. All head coaches have their own offices and assistant coaches in all sports other than men’s and women’s basketball share offices.

OCR determined that there were no disparities on the basis of sex in the amount of administrative, secretarial, and clerical assistance provided to men’s and women’s programs, and the provision of offices is comparable for men’s and women’s coaches. Therefore, OCR determined that there is insufficient evidence to conclude that the University has failed to provide an equal opportunity in the provision of support services, as required by 34 C.F.R. § 106.41(c).

Recruitment of Student Athletes

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

The University reported that it does not specify a recruiting budget for each team, but rather establishes a general operating budget, with the head coach permitted to determine the amount allotted for recruiting from that general budget amount. The University indicated that all head and assistant coaches participate in recruiting and that most sports recruit primarily in the Midwest, except for men’s soccer, which recruits nationally and internationally, and softball, which recruits nationally. The University also reported that men’s and women’s basketball, baseball, and wrestling do some national recruitment and women’s tennis does some international recruiting.

The coaches indicated that they recruit in-person, over the phone, and through the Internet. Male and female athletes alike indicated that they could come to the University for official and unofficial visits and confirmed that they were recruited by coaches, who attended their events and contacted them via text message and phone calls.

The University indicated that the men’s and women’s basketball coaches were the only coaches who received courtesy cars to be used in the recruiting process. The AD said all other coaches receive travel allowances or stipends for recruiting.

In the 2016-2017 academic year, prospective male athletes made 41 official and 70 unofficial visits to the University, and prospective female athletes made 26 official and 72 unofficial visits to the University.

OCR determined that there were no significant disparities on the basis of sex in the recruiting budget per team, as there is a general operating budget to which every coach has access. Moreover, OCR determined that all the coaches recruit in the same manner whether in-person, over the phone or through the Internet, and that only men's and women's basketball coaches have access to other services such as courtesy cars in the recruiting process. Therefore, 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).

Overall Conclusion

OCR found insufficient evidence of a violation in nine component areas: scheduling of games and practice times; travel and per diem allowances; opportunity to receive academic tutoring and assignment and compensation of tutors; opportunity to receive coaching and assignment and compensation of coaches; provision of locker rooms and practice and competitive facilities; provision of medical and training facilities and services; provision of housing and dining facilities and services; provision of support services; and recruitment of student-athletes.

In the remaining four areas (accommodation of athletic interests and abilities, athletic financial assistance, provision of equipment and supplies, and provision of publicity), prior to OCR making a finding, the University agreed to take the steps outlined in the enclosed Agreement to ensure that it provides male and female students an equal opportunity.

This concludes OCR's case resolution activities 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.

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

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 a complaint alleging such treatment.

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

We wish to thank you and your staff for the cooperation the University extended to OCR in its investigation of this complaint. In particular, we wish to thank Ms. Phyleccia Reed Cole, Senior

Page 18 – Dr. Randy Pembrook

Associate General Counsel. If you have any questions, please feel free to contact Jeffrey Turnbull, Team Leader, at 312-730-1611 or by e-mail at Jeffrey.Turnbull@ed.gov.

Sincerely,

Adele Rapport
Director

Enclosure

cc: Ms. Phyleccia Reed Cole