



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

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September 16, 2019

Dr. Ron Dempsey
President
Oakland City University
138 N. Lucretia St.
Oakland City, IN 47660

RE: OCR Docket #05-17-2002

Dear Dr. Dempsey:

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 Oakland City University (University) alleging discrimination on the basis of sex.

The complaint alleged that the University discriminates on the basis of sex in the athletic program component areas of equipment and supplies, travel and per diem allowances, and scheduling of games and practice times. OCR investigated whether the University provides equal athletic opportunities for members of both sexes in the above-referenced areas and the 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 publicity, provision of 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 reviewed data provided by 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 of six program component areas, the University expressed interest in resolving the issue and, on September 4, 2019, signed the enclosed Resolution Agreement (Agreement) regarding these areas. OCR has determined that there is insufficient evidence to establish a violation of the applicable regulations with regard to the remaining five program component areas. The basis for OCR's determination is set forth below.

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

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.”

Consistent with the regulations and the Intercollegiate Athletic Policy Interpretation (Policy Interpretation)¹ issued December 11, 1979 (44 *Fed. Reg.* 71413 *et seq.* (1979)), OCR investigated whether the University provides equal athletic opportunities for members of both sexes. 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)); scheduling of games and practice times (34 C.F.R. §106.41(c)(3)); travel and per diem allowances (34 C.F.R. § 106.41(c)(4)); opportunity to receive academic tutoring and assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); provision of locker rooms, 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)).

OCR examined the above 11 program components to determine whether the University provided equal opportunity for members of both sexes in its intercollegiate athletics program. OCR evaluates compliance with each program component by comparing the availability, quality and kinds of benefits, opportunities and treatment afforded members of both sexes. Institutions 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 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, then 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.

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

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.

Background

The University is a private university located in Oakland City, Indiana. In the 2016-2017 academic year, the University’s full-time undergraduate student enrollment was 490 students, with 230 male students (46.9%) and 260 female students (53.1%).

In 2016-2017, the University offered six intercollegiate men’s sports (baseball, basketball, cross-country, golf, soccer, and tennis) and seven intercollegiate women’s sports (basketball, cross-country, golf, soccer, softball, tennis, and volleyball). The College’s website indicates that it currently offers the same sports as in 2016-2017. The University is a member of the National Collegiate Athletic Association (NCAA) and its teams compete at the NCAA Division II level. The University is not a member of an athletic conference.

The following table shows the number of athletic participants in each sport at the University in 2016-2017:

Men	Sport	Women
23	baseball/softball	16
14	basketball	14
7	cross-country	7
10	golf	10
8	tennis	5
20	soccer	19
N/A	volleyball	10
82	Total	81

Overall, men were 50.3% of the total number of athletes and women were 49.7% of the total number of athletes.

According to the Complainant, how the University distributes money to its teams affects the provision of opportunities to females. For example, the women’s basketball team tried to raise money but were told by members of the community that they had already donated to the University through the athletic director (who is also the men’s basketball coach); however, the

money went to the men’s basketball team rather than to all teams. In addition, athletes had to spend time at a fundraiser to get money for their team accounts, except that a donor provided the money for the men’s basketball team, so they did not have to do what other athletes did.

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.

According to the complaint, because all of the women’s basketball funds had to go toward a trip to Hawaii, the women’s basketball team did not receive new practice jerseys.² The men’s basketball team, in contrast, received new home and away uniforms, practice jerseys, and shoes. Notwithstanding the assertions in the complaint, the budget provided by the University indicated that the women’s basketball team spent more than any other team on equipment.

Women’s basketball athletes said the men’s basketball team gets much better practice jerseys and warmups than does the women’s team, only a few balls they receive are regulation, the away uniforms are old, the team’s away shorts elastic tie waistband is broken, and the team did not have proper sizes. The women’s basketball athletes said they have to purchase their own backpack, while the men’s basketball players do not, and that the amount and suitability of practice and game basketballs was insufficient. The women’s soccer coach said the team needs more equipment.

The men’s basketball athletes said the equipment provided is very old. Men’s golf athletes said the women’s golf athletes fundraised to get “awesome pullovers,” but their coach did not want to fundraise because it was “too much work.” According to the men’s tennis athletes, the uniforms are made of cheap material, unravel, and shrink, and they play with old tennis balls. The baseball athletes said they have broken helmets and jackets that do not zip. The men’s soccer coach said the equipment is a bit dated. The men’s basketball athletes said the amount and suitability of practice and game basketballs was insufficient. The men’s basketball athletes also said the equipment and supplies, such as the basketball shooting machine, the portable skills mannequin, and box jumps, were old.

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

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)

² The investigation established that the women’s basketball team was provided practice jerseys, although the athletes said they are not as nice as those provided to the men’s basketball team.

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.

According to the Complainant, there is a disparity on the basis of sex in practice times, in that the men's basketball team practices in the afternoon, while the women's team practices at night. The women's basketball and volleyball athletes said the men's basketball team gets priority use of the practice facility, from 2:00 to 4:00 p.m., leaving them to practice later, often at times that conflict with mealtimes. The women's basketball coach said the team practices from 4:00 to 6:00 p.m. once volleyball season ends and the volleyball team therefore no longer needs to use the gymnasium, which the coach said she believes is the optimal time for practice. The women's soccer athletes said they would like to practice later when it is not hot but cannot do so because the field lacks lights.

In 2016-2017, men's teams competed in 97, or 66.0%, of the maximum number of 147 events allowable by the NCAA, and women's teams competed in 131, or 73.2%, of the maximum number of 179 events allowable. Excluding the men's and women's cross-country teams which competed together, women's teams at the University competed in prime-time slots 43.0% of the time while men's teams competed in prime-time slots 53.5% of the time.³

The men's basketball athletes said their schedule is very weak and that they would prefer to be in a regional conference. The women's basketball athletes also said their team often has to play the same bad teams that the men's team plays. The men's golf athletes said the women's golf team fundraises in order to compete in more events than the men's team.

The men's soccer athletes and coach and women's soccer athletes said they would like to compete at night but cannot because their field lacks lights. The men's cross-country athletes said they would prefer to practice in the morning, but they cannot because the coach has teaching responsibilities. The men's soccer athletes said practice times sometimes conflict with class or mealtime.

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

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.

According to the complaint, the women's basketball team was required to raise money to pay for a trip for a tournament that both the men's and women's basketball team attended in Hawaii; if they did not raise enough money to pay for the trip, the athletes would have to pay the

³ Prime time for athletic competitions was defined as evenings (after 4:00 p.m.) that precede days without classroom instruction, as well as weekend afternoons.

difference out of pocket. The Complainant asserts that the women's basketball team had to fundraise about double per player the amount the men's team had to fundraise for the same trip to Hawaii. The women's basketball athletes said the Hawaii trip cost them more and they had to fundraise while the men's basketball athletes did not. The men's basketball athletes confirmed that because the women's basketball coach did not raise as much money as the men's basketball coach, the female athletes had to pay more out of pocket for the trip than did the male athletes. The athletic director (AD) told OCR that the Hawaii trip cost all athletes the same amount (\$1050 per person)

The coaches of the men's and women's golf and cross-country teams indicated that their budgets are not sufficient for travel.

According to the Complainant, there was also a disparity on the basis of sex in bus arrangements. The University has three buses, a charter-type bus, an older bus that is used by the baseball and softball teams to transport all of their equipment, and a small bus. The Complainant stated that the women's basketball team only uses the charter bus if it is travelling with the men's basketball team, while the men's basketball team almost always takes the charter bus. The women's basketball athletes confirmed that one of the buses is lower quality, noting that the screens do not work; they said that while they use this bus, the men's basketball team never has to use this bus. The men's basketball athletes confirmed that they do not use this bus.

The men's tennis athletes said the van they use is uncomfortable, as it rocks all the time and the backseat does not lock. The women's tennis athletes said they are squeezed in the van, exceeding the seating limits of the van.

The women's basketball athletes said the men's basketball athletes get better quality meals than they do.

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

Opportunity to Receive Tutoring and the Assignment and Compensation of Tutors

OCR assesses the following to determine 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. There are 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. There are 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 available "upon the request of the student to the Director of Student Life or through the TRiO program if the student qualifies." The University indicated that the tutoring available to athletes is the same as available to all students. The University indicated that tutor qualifications and rate of pay are determined by the department offering the

services: TRiO or Office for Student Life. Athletes and coaches identified no concerns with the quality of tutoring provided or the pupil loads or experience of tutors.

The evidence established that male and female athletes are provided tutoring under similar arrangements, and there were no concerns expressed by coaches or athletes about tutoring. Therefore, OCR determined that the evidence is insufficient to conclude overall that the University has failed to provide an equivalent opportunity in the opportunity to receive tutoring and assignment and compensation of tutors, as required by 34 C.F.R. §§ 106.41(c)(5) and (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.

The University informed OCR that all coaches are part-time. In 2016-2017, men's teams had 1.05 of FTE in coaching for 82 athletes, a ratio of 1:78, while women's teams had 0.93 of FTE in coaching for 81 athletes, a ratio of 1:87. All male and female athletes had a head coach, but only three men's sports (baseball, basketball, and soccer) and no women's sports had an assistant coach.

One men's soccer athlete said the team could use a goalkeeping coach. The men's cross-country athletes said the coach is not present when they have morning practices; however, they characterized the quality of coaching as great. The men's and women's tennis athletes said their coach often does not stay for practices. The baseball athletes said the assistant coach does not provide a lot of input and the head coach is sometimes too busy to provide coaching services. The men's soccer coach said the team needs an assistant coach to assist with recruiting.

The women's basketball athletes said they need an assistant coach. The women's soccer coach said it would be "nice" to have another assistant coach. The volleyball coach said the team needs assistant coaches.

The head coaches of men's teams had collegiate coaching experience ranging from 1 to 32 years, with a median of 7 years. The head coaches of women's teams had collegiate coaching experience ranging from 1 to 25 years, with a median of 6 years.

For the 2016-2017 academic year, excluding sports in which a single coach was paid to coach both men and women, 48.4% of coaching compensation was earned by head and assistant

coaches of men's teams, and 51.6% of coaching compensation was earned by head coaches of women's teams. The salaries paid to head coaches in comparable sports was identical, except that the men's basketball coach made \$120 more than the women's basketball coach

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

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 men's golf athletes said the Oakland City Golf Course, which is the closest to campus and is often used for practices, is too short and its greens and fairways are in terrible condition. The men's golf athletes said the course is poorly maintained. The women's golf athletes concurred and said the greens are not playable at this course.

The men's soccer athletes said the field has an inadequate sprinkler system, causing it to become too hard; it also lacks lights and a public address system. The women's soccer athletes noted that the field is not level, the grass is in poor condition, the goalie box has a dirt floor, there is poor drainage, and most bleachers are old.

The men's tennis athletes said there are dead spots on the court, half of the windscreens have fallen down, and they cannot get the nets down to regulation height because they are anchored into the ground and the concrete has bulged up. The women's tennis athletes said there are no windscreens, there are cracks and dead spots on the court, some lights do not work, and the water pools in places on the court. OCR observed that the nets at the tennis courts appeared loose and the ground was uneven in spots and had small cracks.

Baseball athletes said their field lacks lights and is "outdated," with an old public address system and foul poles that are "beaten up." The men's basketball athletes characterized the concessions and scoreboard at their facility as outdated, and the volleyball athletes also said the scoreboard is outdated.

The University also indicated that the softball team arranges for use of an off-campus field. The softball athletes indicated that they need their own softball complex. The men's cross-country athletes said they would like to have a track on campus, but that the track they use at the nearby high school is adequate. The women's basketball coach said practice has been cancelled several times because of other events at the team's practice facility.

The women's basketball athletes said the lockers are in poor repair and the locker room smells bad. The volleyball athletes said there are septic problems in the locker room and they characterized the locker room as "gross" and "outdated." The men's basketball athletes said their locker room also smells bad and lacks air conditioning. The women's basketball coach agreed that the problems with the team's locker room include plumbing and drainage issues and the smell of sewage; the coach said the players will not use the showers in the locker room. The volleyball coach said the sewer gas leaks in the locker room, characterizing the smell as "awful." The coach also indicated that athletic lockers would be better than the existing lockers, which trap smells of sweaty clothing. The women's soccer team said there is no hot water for showers in their locker rooms.

The volleyball athletes said the floor is not kept clean during their season and is not waxed before the season, causing athletes to fall a lot. The women's cross-country athletes said they practice by running through town and that a lot of sidewalks are torn up.

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

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 men's basketball coach indicated that a doctor is sometimes present for home competitions, but all other coaches indicated that a doctor is not available for practices or competitions.

The University indicated that all male and female athletes are covered under a secondary accident policy provided by the University for accidents that occur in intercollegiate sports, up to a cost of \$90,000. Documentation provided by the University indicated that this plan covers costs in excess of a family or employer plan. The University indicated that costs exceeding \$90,000 qualify for NCAA catastrophic insurance.

The University indicated that all male and female athletes use the University's fitness center, which is available to all students. The AD said coaches can determine whether they wish to have a specific regimen for athletes to follow and can opt to supervise the weight training if the team works out together. Coaches confirmed that athletes all use the same facility. Athletes from several men's sports indicated a concern with a lack of free weights in the facility and noted that some athletes had chosen to purchase private gym memberships for themselves. Volleyball athletes also noted that the whole team cannot lift weights at the same time. Athletes noted that the treadmill in this facility was broken, and volleyball athletes identified the lack of an elliptical machine as a problem.

The University has one full-time athletic trainer available to all student-athletes. Two training rooms are available for athletes. The AD said the trainer is on campus anytime there is a practice or competition and can be at any facility within a few minutes if needed.

The evidence established that male and female athletes are provided comparable access to medical and training facilities and services. To the extent that there are concerns about the weight training facility, these concerns affect men and women equally. While the men's basketball team has a doctor present for some home games, OCR determined that this single disparity is insufficient to establish overall that the University has failed to provide an equivalent opportunity in the opportunity to receive 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).

According to the University, "Student-athletes are expected to reside in the residence halls available to all students or to reside with their families. The only University housing available outside of the residence halls are University owned houses available to any staff member or married student." Athletes confirmed there are no athletic dorms and that they live in the same facilities as other students.

The University informed OCR, "One dining hall is available for all students and staff." The University indicated that the men's basketball, women's basketball, and volleyball teams are sometimes unable to use the dining facilities due to competition schedules and are provided pre-game meals on these occasions.

The evidence established that male and female athletes are provided comparable access to housing and dining facilities and services, and there were no concerns expressed by coaches or athletes about housing and dining facilities and services. Therefore, OCR determined that the evidence is insufficient to conclude overall that the University has failed to provide an equivalent opportunity in the opportunity to receive housing and dining facilities and services, 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 Sports Information Director (SID) who is responsible for maintaining the website and publishing scores, rosters, and other team information.” The AD said the SID and Promotions Director do all they can to support each sport when it is in season.

The men’s soccer coach said the SID is stretched thin. The women’s basketball athletes said the men’s basketball team receives more newspaper coverage than they do. The men’s golf athletes characterized the publicity services they receive as “nonexistent,” but they noted that golf is not a spectator sport. The men’s soccer athletes said their team does not receive publicity services, the baseball athletes said their publicity is non-existent, and the men’s basketball athletes said the publicity they receive is poor. The women’s soccer athletes said they receive poor publicity, and the women’s cross-country athletes said they receive no publicity.

The University indicated that it provides game day programs for men’s and women’s soccer, men’s and women’s basketball, volleyball, baseball, and softball. The University further indicated that the local newspaper covers all sports and that the University held a media day for men’s and women’s basketball, with a booklet provided for each team. The volleyball athletes said they would like to see more advertisements posted for their games.

The University indicated that each sport has its own section on the University’s athletics web site. The men’s basketball athletes characterized the website as “horrible.” The women’s tennis athletes said their team is not mentioned on the website.

The men’s cross-country athletes said they could use more exposure on social media. The baseball athletes said one athletic social media account focuses only on basketball. The women’s basketball athletes said they wanted a team account on a different social media site but it “fell through.” The women’s soccer coach said more publicity is needed through social media.

Athletes and/or coaches in all sports except softball and men’s tennis expressed concerns about the publicity provided to their teams. The evidence established that male and female athletes are provided comparable access to publicity. OCR noted the lack of publicity for men’s and women’s teams overall but determined that the evidence is insufficient to establish overall that the University has failed to provide equivalent opportunities to men and women in the provision of publicity, as required by 34 C.F.R. § 106.41(c)(10).

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 informed OCR, “A full-time University employee with administrative assistant duties is available in the Johnson Center and another is available at the Tichenor Center for clerical and administrative support for all sports. Both employees have other duties outside of the administrative assistant role.” The coaches all have offices of adequate quality.

The evidence established that male and female athletes are provided comparable access to support services, and there were no concerns expressed by coaches or athletes about support services. Therefore, OCR determined that the evidence is insufficient to establish overall that the University has failed to provide an equivalent opportunity in the opportunity to receive 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 AD said that while each coach recruits using his or her own budget, he would not deny requests for additional funds if necessary for recruiting. He said he has not denied any requests for recruiting expenses.

The men's and women's cross-country, women's soccer, and volleyball coaches all indicated that they need more money for recruiting. Further, the men's basketball team received substantially more money in its recruiting budget than did any other teams.

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

Conclusion

OCR found insufficient evidence of a violation in five component areas: opportunity to receive academic tutoring and assignment and compensation of tutors, provision of medical and training facilities and services, provision of housing and dining facilities and services, provision of publicity, and provision of support services. The University signed an Agreement to resolve the remaining six areas. Under the Agreement, the University agreed to provide equivalent treatment, benefits, and opportunities to female and male student athletes with respect to the provision of equipment and supplies; scheduling of games and practice times; the provision of travel and per diem allowances; the availability of coaches; the provision of locker rooms and practice and competitive facilities; and the recruitment of athletes.

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 of opportunity to receive academic tutoring and assignment and compensation of tutors, provision of medical and training facilities and services, provision of housing and dining facilities and services, provision of publicity, and provision of support services 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. In particular, we wish to thank Mr. Mike Schiff, counsel for the University. If you have any questions regarding this letter, please contact Salina Lopez, Senior Equal Opportunity Specialist, at (312) 730-1627 or by email at Salina.Lopez@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Mike Schiff