



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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January 10, 2018

Dr. Carlo Montemagno
Chancellor
Southern Illinois University – Carbondale
Anthony Hall 116
1265 Lincoln Drive
Carbondale, IL 62901-4304

Re: OCR Docket # 05-17-2224

Dear Dr. Montemagno:

On April 6, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint against the Southern Illinois University – Carbondale (University). The complaint alleges that the University discriminates against female students on the basis of sex. Specifically, the complaint alleges that the University fails to provide equal athletic opportunities by not effectively accommodating the interests and abilities of members of both sexes in its intercollegiate athletics program.

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 at 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex in any educational program or activity operated by a recipient of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.

During its investigation, OCR interviewed the Complainant and reviewed information provided by both parties. Prior to the conclusion of OCR's investigation, the University expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The College signed the enclosed Resolution Agreement and submitted it to OCR on January 8, 2018, which when fully implemented will resolve the issue raised in the complaint. A description of OCR's investigation to date follows.

Applicable Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity. In particular, a recipient may not subject any person to separate or different rules of behavior, sanctions, or other treatment on the basis of sex, or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

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 implementing regulation, at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies,¹ require a recipient of Federal financial assistance from the Department to provide participation opportunities in its intercollegiate athletics program for female and male students that equally and effectively accommodate the athletic interests and abilities of members of both sexes. OCR uses a three-part test to assess whether the interests and abilities of members of both sexes are being effectively accommodated to the extent necessary to provide an equal opportunity to participate in intercollegiate athletics. A recipient may demonstrate compliance with Title IX using any one part of the following three-part test:

1. The recipient is providing intercollegiate athletic participation opportunities for female and male students in numbers substantially proportionate to their respective enrollments; or
2. The recipient has a history and continuing practice of intercollegiate athletic program expansion that is demonstrably responsive to the developing interests and abilities of students who are members of the underrepresented sex; or
3. The interests and abilities of students who are members of the underrepresented sex have been fully and effectively accommodated by the recipient's current intercollegiate athletics 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.

In addition, an institution's athletics program must equitably provide each sex with the level of competition reflective of its respective abilities. The Policy Interpretation outlines two factors for assessing 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 numbers² of male and female athletes equivalently advanced competitive opportunities; or,
2. Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

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

Factual Background

¹The policies pertaining to the accommodation of athletic interests and abilities include the December 11, 1979, Intercollegiate Athletics Policy Interpretation (Policy Interpretation), at 44 *Fed. Reg.* 71,413 *et seq.*

² OCR considers participation opportunities to be substantially proportionate when the number of participation opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team, i.e., a team for which there is a sufficient number of interested and able students and enough competition to sustain an intercollegiate team. As a frame of reference in assessing this situation, OCR may consider the average size of teams for the underrepresented sex, a number that might vary by institution.

The University participates in Division I athletics and is a member of the Missouri Valley Conference. This complaint was precipitated by the University’s announcement in January 2017 that its men’s and women’s tennis program would end at the conclusion of the 2016-17 academic year.³ During the tennis program’s final year of intercollegiate competition, there were seven members of the men’s tennis team and ten members of the women’s tennis team. The complaint asserts that the elimination of women’s tennis contributed to the University’s allegedly existing non-compliance with Title IX in its intercollegiate athletic program.

For the 2015-16 and 2016-17 academic years, the University identified 9 male, 9 female, and no coed teams in its intercollegiate athletic programs. The University’s website lists competitive intramural sports and clubs: <http://rec.siu.edu/programs/competitive-sports/intramural-sports.php> and <http://rec.siu.edu/programs/competitive-sports/sport-clubs.php>. The intramural sports offered by the University that are NCAA sports are already offered as varsity sports (basketball, softball, and volleyball). The University also offers several non-NCAA intramural sports (cricket, dodgeball, poker night, flag and football). The University offers 29 types of sports clubs for both men and women. The other club sports are recreational or fitness activities.

2015-16

For the 2015-16 academic year, the University enrolled 5,757 (53.1%) full-time undergraduate male students and 5,077 (46.9%) full-time undergraduate female students. The University identified 198 (40.2%) female participants and 295 (59.8%) male participants in its intercollegiate athletics program. This represents a 6.7% difference in the participation and enrollment rates. There were 97 more male participation opportunities than female participation opportunities. The University needed 62.56 additional participation opportunities for women to have achieved exact proportionality.

SPORT	MALE PARTICIPANTS	FEMALE PARTICIPANTS
Baseball	32	NA
Basketball	15	12
Football	105	NA
Golf	9	10
Softball	NA	16
Swimming/Diving	28	29
Tennis	9	10
Track: XC	9	16
Track: Indoor	44	45
Track: Outdoor	44	44
Volleyball	NA	16
TOTAL	295	198
Percentage	59.8%	40.2%

³ In a press release, the University’s Athletic Director said the programs were eliminated “due to ongoing declines in revenue from student fees, ticket sales, as well as budget forecasts indicating reduced future revenue.” The Athletic Director also stated: “In light of the severe budget environment, we simply ran out of options. As budgets are cut across campus, Athletics must do its part.” http://siuslukis.com/documents/2017/1/26/Sport_Reduction.pdf.

2016-17

For the 2016-17 academic year, the University enrolled 5,252 (53.0%) full-time undergraduate male students and 4,651 (47.0%) full-time undergraduate female students. The University identified 203 (42.7%) female participants and 272 (57.3%) male participants in its intercollegiate athletics program. This represents a 4.3% difference in the participation and enrollment rates. There were 69 more male participation opportunities than female participation opportunities. The University needed 38.21 additional participation opportunities for women to achieve exact proportionality.

SPORT	MALE PARTICIPANTS	FEMALE PARTICIPANTS
Baseball	34	NA
Basketball	16	14
Football	102	NA
Golf	9	9
Softball	NA	16
Swimming/Diving	27	39
Tennis	7	10
Track: XC	8	19
Track: Indoor	35	39
Track: Outdoor	34	38
Volleyball	NA	19
TOTAL	272	203
Percentage	57.3%	42.7%

Level of Competition

In terms of levels of competition during 2016-17, 98.0% (141/144) of women’s athletic competitions were against other Division I teams; for men the figure was 96.2% (127/132). Men’s and women’s sports in 2016-17 that competed in tournament or invitational meets with multiple opponents had similar competitive schedules (cross country, track & field, and some swimming and diving).

Analysis and Conclusion

OCR completed an analysis of one element of the University’s accommodation of the interests and abilities of the underrepresented sex. OCR analyzed the level of competition between the women’s and men’s athletic programs during 2016-17 on a program-wide basis. The University participates in Division I athletics and is a member of the Missouri Valley Conference. OCR’s investigation showed that women’s teams competed against other Division I teams in proportionately similar numbers to men’s teams (98.0% (141/144) of women’s athletic competitions were against other Division I teams; for men the figure was 96.2% (127/132)). Men’s and women’s sports in 2016-17 that competed in tournament or invitational meets with multiple opponents had similar competitive schedules (cross country, track & field, and some swimming and diving).⁴ OCR determined that the competitive schedules for men’s and women’s

⁴ OCR counted head-to-head swimming and diving meets and also confirmed proportionality for that sport’s tournament-style competitions.

teams on a program-wide basis afforded proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities. Therefore, OCR's investigation indicates that the University provided an equivalent level of competition to its men's and women's teams in 2016-17.

In accordance with Section 302 of the CPM, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the University expressed interest in resolving the complaint under Section 302 and notified OCR of its intent to demonstrate compliance with Part 1 of the three-prong test by no later than the 2019-20 academic year by adding a new women's intercollegiate sport, specifically soccer, and to potentially demonstrate compliance with Part 1 of the three-prong test during the 2018-19 academic year using roster management to increase opportunities for women without eliminating opportunities for men. OCR determined that a resolution agreement with the University is appropriate under the circumstances presented by this case. The enclosed Resolution Agreement, when fully implemented, will address the issue raised in the complaint. The provisions of the Resolution Agreement are aligned with the allegations in the complaint and the information obtained during OCR's investigation to date, and are consistent with the applicable regulations. OCR will monitor the implementation of the Resolution Agreement until the University is in compliance with the Title IX regulations at issue in this case.

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 Complainant 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.

OCR would like to thank the University, as well as Mr. Ian Cooper, the attorney for the University, for the cooperation and courtesy extended to OCR during our investigation. We look forward to working with you during the monitoring of the Resolution Agreement.

If you have any questions or need assistance, please contact Melissa Katt at (312) 730-1617 or Melissa.Katt@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure
CC: Ian Cooper