



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

230 SOUTH DEARBORN ST., 37TH FLOOR
CHICAGO, IL 60604

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May 18, 2020

Mr. Geoffrey S. Mearns
President
Ball State University
Sent via email only to president@bsu.edu

Re: OCR Docket #05-19-2303

Dear Mr. Mearns:

The U.S. Department of Education (Department), Office of Civil Rights (OCR), has completed its complaint resolution activities in connection with the above-referenced complaint against Ball State University (University) alleging discrimination on the basis of sex.

The complaint alleged the following:

1. the University discriminates based on sex against female athletes by failing to provide them equal opportunity to receive coaching and in the assignment and compensation of coaches; and
2. the University discriminates based on sex against female athletes by failing to provide them equal opportunity in the provision of medical and training services and facilities.

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 the investigation, OCR reviewed information provided by the Complainant and the University, interviewed the Complainant, University personnel, and University student-athletes, and reviewed University facilities. Based on the investigation, OCR determined that there is insufficient evidence to establish a violation with regard to Allegation #1. Prior to OCR making a finding regarding Allegation #2, the University expressed interest in resolving the allegation in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The University executed the enclosed Resolution Agreement (Agreement) on May 6, 2020.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the complaint was resolved.

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.”

Accordingly, 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 in the opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)) and the provision of medical and training facilities and services (34 C.F.R. § 106.41(c)(8)).

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

For each factor in each program component, OCR examines the factor relating to the benefits, opportunities or treatment of male and female athletes. Once each factor has been analyzed, then OCR makes a determination for that program component. OCR considers whether the same or similar benefits, opportunities or treatment are provided for all students or, if not, whether the differences have a negative effect on one sex that results in a disparity. When disparities are identified between the men’s and the women’s teams, 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(s) 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

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

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

In the 2019-2020 academic year, the University offers the following 7 intercollegiate men’s sports: Baseball, Basketball, Football, Golf, Swimming and Diving, Tennis, and Volleyball. In the 2019-2020 academic year, the University offers the following 12 intercollegiate women’s sports: Basketball, Cross Country, Field Hockey, Golf, Gymnastics, Soccer, Softball, Swimming and Diving, Tennis, Track and Field (indoor and outdoor), and Volleyball.

The following table shows the number of athletic participants in the 2019-2020 academic year:

Athletic Participants 2019-2020

Men	Sport	Women
40	Baseball/Softball	24
14	Basketball	15
0	Cross Country	14
0	Field Hockey	24
114	Football	0
8	Golf	9
0	Gymnastics	19
0	Soccer	27
28	Swimming/Diving	28
10	Tennis	7
0	Indoor Track & Field	33
0	Outdoor Track & Field	33
20	Volleyball	19
234	Total	252

Opportunity to Receive Coaching and Assignment and Compensation of Coaches

Facts

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 ratio of coaches to athletes is slightly lower for women's sports (1:7.7) than men's sports (1:7.9). All men's and women's coaches except for the Football coach have at least 9 years of collegiate coaching experience.

Concerns were expressed regarding the amount of coaches provided in four men's sports (Tennis, Golf, Baseball, Swimming), which together make up 36.8% of all male athletes. Concerns were expressed regarding the amount of coaches provided in five women's sports (Tennis, Golf, Softball, Swimming, and Cross Country), which together make up 32.5% of all female athletes.

Men's coaches average nearly 27 years of collegiate coaching experience, while women's coaches average 14 years of collegiate coaching experience. Concerns were expressed about quality of coaching in one men's sport (Volleyball), which makes up 8.5% of all male athletes, and three women's sports (Gymnastics, Basketball, and Swimming), which make up 24.6% of all female athletes.

The University pays its head coaches (excluding Swimming, in which men and women share a head coach) a total of \$2,106,814. Of this amount, men's head coaches receive 58.8% and women's head coaches receive 41.2%. Excluding Swimming, male athletes are 47.9% of all athletes and female athletes are 52.1% of all athletes.

Testimony revealed that the nature of coaching duties performed, the working conditions, and other terms and conditions of employment are similar for men's and women's coaches.

The University explained the disparities identified in compensation of coaches, asserting that it uses several factors in determining the salaries and contract terms of coaches, including market data from the Mid-American Conference and other peer conferences, available resources, and prior coaching experience and compensation.

Analysis and Conclusion

OCR examined the University's provision of benefits and opportunities to its female and male athletes in the availability of coaches, in the assignment of coaches, and in the compensation of coaches. Concerns were expressed regarding availability and/or assignment in five men's sports (Baseball, Golf, Swimming, Tennis, and Volleyball), which make up 45.3% of all male athletes and seven women's sports (Basketball, Cross-Country, Golf, Gymnastics, Softball, Swimming, and Tennis), which make up 46.0% of all female athletes. Men's coaches receive more in salary than women's coaches and a greater proportion of female athletes (sports that include 24.6% of all female athletes) than male athletes (a sport that includes 8.5% of all male athletes) expressed concerns about the quality of coaching. While men's head coaches have more experience than women's head coaches on average, the head coaches of women's teams all have extensive coaching experience. In addition, the ratio of coaches to players slightly favors women over men, and a greater proportion of male coaches and athletes (sports that include 36.8% of all male athletes) than female coaches and athletes (sports that include 32.5% of all male athletes) expressed concerns about the amount of coaching.

Based on the above, OCR determined that the evidence is insufficient to establish a violation of the Title IX regulations, at 34 C.F.R. § 106.41(c)(5) & (6), with regard to the opportunity to receive coaching and assignment and compensation of coaches.

Medical and Training Facilities and Services

Facts

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

The University indicated that it does not employ a physician for the athletics department but that there is a partnership with the physicians at the Central Indiana Orthopedics (CIO) offices. Athletic trainers can refer an athlete there as needed. Testimony indicated that a doctor from CIO is also on-site at the University regularly and is present for some home competitions. Women's Swimming athletes said they could use access to a physical therapist or a chiropractor. Women's Swimming makes up 11.1% of all female athletes.

The University indicated that all student-athletes are covered under an accident policy provided by the University at no cost to the athletes. The University also indicated that athletes, like all other students at the University, have access to health care at the Health Center on campus.

The University has two weight training and conditioning facilities, one located at Worthen Arena (Worthen) and one located at the Fisher Football Complex (Fisher), scheduled for use by athletes. Athletes confirmed that teams have scheduled access to the weight training facilities; they said they typically work out 2-3 times per week as a team at scheduled times supervised by a strength coach, and male and female athletes alike said the facilities are available for their individual use at other times, as long as someone is present to supervise. Athletes from eight sports indicated that the weight room to which their team is assigned is too small: Men's Basketball, Baseball, Men's Swimming, Women's Gymnastics, Field Hockey, Women's Soccer, Women's Golf, and Softball. In addition, the Women's Basketball athletes said they are assigned to the weight room at Fisher, which is an inconvenient location for them. Men's Basketball, Baseball, and Swimming make up 35.0% of all male athletes; Women's Gymnastics, Field Hockey, Soccer, Golf, and Softball make up 40.9% of all female athletes.

The University indicated that all four training facilities are available to all athletes; the two principal facilities are located at Worthen and Fisher and there is one small satellite facility at the Shondell Practice Facility (Shondell) and one small satellite facility under the bleachers at the football stadium. Athletes confirmed that teams have scheduled access to the training facilities. However, athletes from three sports indicated that the training room is too small: Men's Swimming, Men's Golf, and Women's Volleyball. Men's Swimming and Golf make up 15.4% of all male athletes; Women's Volleyball makes up 7.5% of all female athletes.

The University reported to OCR that it has 10 full-time certified athletic trainers. Athletes confirmed that teams have assigned athletic trainers and access is generally scheduled. The Men's Golf, Women's Track & Field, Women's Golf, Women's Swimming, and Softball athletes identified problems gaining access to trainers, often because the trainer is serving other teams, and the Women's Tennis athletes said it would be good if the trainer was at practices and at away competitions. Women's Soccer athletes also identified concerns with the quality of the trainer assigned to their team. Men's Golf makes up 3.4% of all male athletes; Women's Indoor and Outdoor Track and Field, Golf, Swimming, Softball, and Tennis make up 53.2% of all female athletes.

Analysis and Conclusion

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. While the athletes all have equal access to insurance coverage, concerns were expressed regarding medical and training facilities and services in four men's sports (Basketball, Baseball, Golf, and Swimming), which make up 38.5% of all male athletes, and all women's sports. OCR did not request and the University did not provide any legitimate, nondiscriminatory factors to explain the disparities identified in medical and training facilities and services.

The University expressed interest in resolving the allegation. OCR determined that it is appropriate to resolve this allegation via Section 302 of the CPM. On May 6, 2020, the University executed the enclosed Agreement, which when fully implemented, will address the concerns in this program component area. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

Overall Conclusion

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 Allegation #1 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.

OCR would like to thank the University for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Ms. Shawn Neal, Senior Associate General Counsel. If you have any questions regarding this matter, please contact Ms. Anastasie Sénat, OCR Attorney, at 312-730-1628 or by email at Anastasie.Senat@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Shawn Neal (sent via email to shawneal@bsu.edu)