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March 14, 2014

Dr. John L. Crain, President  
Southeastern Louisiana University  
SLU 10784  
Hammond, Louisiana 70402

Re: Compliance Rev. No. 06-10-6001

Dear President Crain:

This letter is to notify you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106.

The compliance review assessed whether Southeastern Louisiana University (SELU or the University) provided male and female students an equal opportunity to participate in the University's intercollegiate athletic program by effectively accommodating their interests and abilities and providing opportunities for financial assistance to members of both sexes in proportion to the participation rate of men and women in the intercollegiate athletics program. OCR's compliance review also examined whether SELU provided equal athletic opportunities for male and female students with regard to the benefits and opportunities in all other aspects of the University's intercollegiate athletics program, as described below.

OCR is responsible for enforcing Title IX and its implementing regulation, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. SELU is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdictional authority to conduct this compliance review under Title IX.

OCR's investigation included a comprehensive review and analysis of documents and other data pertinent to the compliance review issues. OCR conducted onsite visits to the University in September 2010, January 2011, March 2011, and, most recently, in September 2013, to observe progress of ongoing changes regarding SELU athletic facilities. OCR also interviewed administrators responsible for the overall operation of the athletic program, pertinent staff who are knowledgeable about the history, development and growth of the present athletic program, coaches and athletes from all women's and men's teams, and students, including athletes participating in intercollegiate, intramural, as well as club athletic programs.

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

Prior to OCR's completion of the investigation, SELU requested to resolve the compliance review. Given the information obtained in OCR's investigation to date, OCR determined that the agreement should address three components: accommodation of athletic interests and abilities, athletic financial assistance, and the provision of locker rooms, practice, and competitive facilities. With respect to the remaining components examined in the University's athletics program, OCR determined that the evidence is insufficient to conclude that SELU is denying women equal athletic opportunities. The following is a statement of the applicable regulations and legal standards and a summary of the information obtained to date regarding OCR's investigation of the SELU's athletic program. SELU submitted the enclosed Resolution Agreement on November 13, 2013, which addresses OCR's compliance concerns.

### Background

SELU is located in Hammond, Louisiana and first opened its doors in 1925. SELU currently offers the following six intercollegiate men's sports: baseball, football, basketball, golf, track and field, and cross country. SELU also offers the following seven intercollegiate women's sports: softball, basketball, cross country, track and field, soccer, tennis, and volleyball. SELU competes at the Division I level as a member of the National Collegiate Athletic Association (NCAA) and the Southland Conference (SLC).

### Legal Standard and Issues Investigated

The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states generally that “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 [of Federal financial assistance], and no recipient shall provide any such athletics separately on such basis.”

In this review, OCR examined whether SELU provide male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with the Title IX implementing regulation at 34 C.F.R. § 106.41(c)(1). The implementing regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports effectively accommodates the interests and abilities of members of both sexes to the extent necessary to provide equal opportunity. OCR also examined whether SELU provides its athletes scholarship opportunities in proportion to the number of students of each sex participating in intercollegiate athletic. The provision of athletic scholarships or grants-in-aid is addressed in the Title IX implementing regulation at 34 C.F.R. § 106.37(c), which states that “to the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in [] intercollegiate athletics.” The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), also requires a recipient to provide equal athletic opportunity for members of both sexes at 34 C.F.R. §106.41(c)(2), in the provision of equipment and supplies, at 34 C.F.R. §106.41(c)(3), in the scheduling of games and practice time, at 34 C.F.R. § 106.41(c)(5) & (6), in the opportunity to receive academic tutoring and in the assignment and compensation of tutors, at 34 C.F.R. § 106.41(c)(5) & (6), in the opportunity to receive coaching and in the assignment

and compensation of coaches, at 34 C.F.R. §106.41(c)(7), in the provision of locker rooms, practice and competitive facilities, at 34 C.F.R. §106.41(c)(8), in the provision of medical and training facilities and services, at 34 C.F.R. § 106.41(c)(9), in the provision of housing and dining facilities and services, at 34 C.F.R. § 106.41(c)(10), in the provision of publicity, at 34 C.F.R. § 106.41(c), in the provision of support services, and at 34 C.F.R. § 106.41(c), recruitment of student athletes.

In addition to language from the regulation, OCR also uses as a mean of assessing compliance guidance provided in the “Intercollegiate Athletics Policy Interpretation,” issued December 11, 1979, (Policy Interpretation); the Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test, issued on January 16, 1996; and the Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three, issued on April 20, 2010.

### **I. Accommodation of Interests and Abilities -- 34 C.F.R. § 106.41(c)(1)**

OCR examined whether SELU provided male and female students an equal opportunity to participate in its intercollegiate athletics program by effectively accommodating their interests and abilities, in accordance with 34 C.F.R. § 106.41(c)(1). This interest and ability analysis consisted of two parts: (1) equal opportunities to participate, and (2) levels of competition.

OCR used the “Three-Part Test” to determine whether SELU provides equal opportunities to participate in its intercollegiate athletic program. The “Three-Part Test” involves consideration of the following three questions:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments (Part 1); 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 which is demonstrably responsive to the developing interest and abilities of that sex (Part 2); 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 interest and abilities of the members of that sex have been fully and effectively accommodated by the present program (Part 3).

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.

#### *Part One: Substantially Proportionate Participation Opportunities*

According to data from SELU, during the 2009-2010 school year, there were a total of 11,196 students at the University. Female students comprised 6,834 (or 61%) of the total number of

students, but comprised only 140 (or 38%) of SELU's 368 athletes (based on OCR's review of SELU's eligibility lists), resulting in a 23% difference between the female representation in the overall student body and their athletic participation rate. For the 2009-2010 year, an additional 217 female athletic opportunities would have been necessary to achieve substantial proportionality without cutting any athletic opportunities for males. Therefore, the number of opportunities that would be required to achieve proportionality would be sufficient to sustain a viable team, *i.e.*, a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team.

The results are similar for the 2010-2011 school year. During the 2010-2011 school year, there were a total of 11,005 students at SELU. Females comprised 6,676 (or 61%) of the total number of students, but comprised only 119 (or 39%) of SELU's 303 athletes, resulting in a 22% difference between the female representation in the overall student body and their athletic participation rate. For the 2010-2011 school year, an additional 169 female athletic opportunities would have been necessary to achieve proportionality without cutting any athletic opportunities for males.

Accordingly, OCR concluded that SELU was not providing participation opportunities to male and female athletes in numbers substantially proportionate to their respective enrollments. Women are underrepresented in SELU's intercollegiate athletics program.

#### *Part Two: History and Continuing Practice of Program Expansion*

OCR next considered whether SELU has a history and continuing practice of program expansion. In considering whether past actions of an institution have expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities, OCR examines an institution's record of adding intercollegiate teams, or upgrading club or intramural teams, for the underrepresented sex; its record of increasing participation numbers for the underrepresented sex; and its affirmative responses to student requests for the addition or elevation of sports. OCR also examines current practices that support continued expansion.

OCR's review of data from SELU revealed that all of the current men's sports teams were competing at the intercollegiate level by the early 1950's. Women's sports teams began two years after the enactment of Title IX, in 1974, with the addition of women's basketball and volleyball to the University's intercollegiate athletics program. Women's tennis was also added sometime in the mid-1970s. In 1985, women's track, softball and cross country began intercollegiate play at SELU. In 1995, women's intercollegiate soccer began play at SELU. No other women's team has been added since 1995. There has been no elimination of a women's intercollegiate athletic team.

OCR has determined that SELU has not added or elevated an intercollegiate women's athletic team in 19 years, since women's soccer was added in 1995. Additionally, SELU does not have a formal process currently in place for requesting and adding a new sport. Thus, OCR concluded that SELU could not demonstrate a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of women athletes.

*Part Three: Effective Accommodation of Interest and Abilities*

Even when an institution cannot demonstrate compliance with either parts one or two of the Three-Part Test, OCR may find the recipient in compliance through Part Three of the Three-Part Test if an institution is fully and effectively accommodating the interests and abilities of the underrepresented sex through the current athletics program. To make this determination, OCR will consider assessment of unmet interest and ability, if an institution has a practice of conducting such assessment. OCR also typically looks to an institution's club and/or intramural program as indicators of possible interest and ability to participate in intercollegiate sports, and considers other indications of possible interest and ability such as developing sports on a nationwide level and/or the sports offered in the areas from which the recipient draws its students.

OCR determined that SELU's primary means of assessing athletic interest are its Entering Freshmen Survey and Current Student Survey. Since 1996, SELU has administered the Entering Freshmen Survey during Orientation. The Current Student Survey is a survey given to a random sample of SELU students that seeks to gauge their levels of satisfaction with various campus services and opportunities. Both the Entering Freshmen Survey and the Current Student Survey includes questions asking whether the student has an interest in playing a particular intercollegiate sport. SELU staff indicated that the University will conduct a feasibility study of local ability in a given sport that is not currently offered if 5% of the respondents on the Freshmen Survey indicate an interest in that sport. Because the 5% threshold has not been reached, no feasibility study has been conducted. However, SELU staff admits the 5% threshold bears no relationship to the number of athletes required to field a women's sports team.

In addition to reviewing the survey data, OCR interviewed SELU athletic department administrators who were either unsure or believed the University's athletics program fully and effectively accommodated the interest and abilities of its participants. OCR also interviewed all head and assistant coaches of the men's and women's teams at SELU, the Director of Recreational Sports and Wellness and the Coordinator of Recreational Services who are the top two administrators for club/intramural sports, groups of intercollegiate athletes which represented all men and women's athletic programs offered at SELU, and two groups of male and female athletes who represent the SELU intramural and club sport athletes. All of the above-listed groups reported that they believed the current athletics program at SELU was fully and effectively accommodating the interest and abilities of the students.

SELU also prepares an annual report on what sports are offered at area high schools, which are SELU's top feeder parishes for students. The report indicated that SELU is currently offering 13 of the 27 boys and girls high school sports being offered at SELU's top six feeder parishes. Of the 14 sports not offered by SELU, 13 of these sports are not offered within the Southland Conference for men or women. The only sport not offered by SELU within the Conference is women's golf. Of the women's sports, 47 area high schools offered golf as a competitive sport.

SELU also provided information regarding the recruiting of athletes for its Division I intercollegiate program. SELU coaching staff reported that with the exception of women's soccer, women's tennis, and men's golf, athletes are typically recruited from the same regional

areas (for example, the Southland conference areas of Texas and Louisiana, as well as other southern states). In addition to regional areas, women's soccer recruits heavily from Canada. SELU reported that it recruits internationally for students for the women's tennis and men's golf team.

Based on the above information, OCR concluded that SELU was not providing participation opportunities to male and female athletes in numbers substantially proportionate to their respective enrollments and that female athletes are underrepresented in SELU's athletics program (Part One). OCR concluded that SELU does not have a history and continuing practice of program expansion which was demonstrably responsive to the developing interests and abilities of women athletes (Part Two). Finally, OCR also concluded that the 5% threshold required by SELU to field a new women's sports team was not correlated to the actual minimum number of athletes required to field a women's sports team. Women's golf is the only sport offered in SELU's athletic conference that SELU does not offer. The information gathered by OCR also reveals sufficient interest and ability in women's golf to warrant further inquiry into adding women's golf as an additional women's sports team at SELU.

Prior to OCR concluding its investigation, including analyzing levels of competition, and making an investigative finding, the University expressed an interest to resolve the compliance issues identified during the course of the investigation. The resulting Agreement includes specific steps that the University will take to address and ensure that it is effectively accommodating the athletic interests and abilities of female students. As detailed later, the University has indicated its intention to demonstrate compliance with the applicable Title IX regulation by demonstrating its compliance with Part 3 of the Three-Part Test.

## **II. Athletic Financial Assistance (AFA) – 34 C.F.R. §106.37(c)**

The Title IX regulation, at 34 C.F.R. §106.37(c), requires that a university provide reasonable opportunities for athletic scholarship awards for members of each sex in proportion to the number of students of each sex participating in its intercollegiate athletics program. Under the Policy Interpretation, compliance with 34 C.F.R. § 106.37(c) is measured by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results to determine whether proportionately equal amounts of financial assistance are available to men's and women's athletic programs. Institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. If any unexplained disparity in the scholarship budget for athletes of either sex is one percent or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Conversely, there will be a strong presumption that an unexplained disparity of more than one percent is in violation of the Title IX regulation.

OCR completed an analysis of the financial aid amounts awarded for the 2009-10 and 2010-11 academic school years and unduplicated counts of male and female participation rates to assess proportionality in the awarding of financial assistance.<sup>1</sup> During the 2009-2010 school year, SELU reported participation rates of 106 female athletes and 185 male athletes for a total of 291 athletes. Thus, for the 2009-2010 school year, 36.4% of the athletes were female and 63.6% were male. The 106 female athletes received \$798,258 of AFA while the 185 men received \$1,161,173 of AFA for a total of \$1,950,431 of AFA received by male and female athletes.<sup>2</sup> The female athletes received 40.5% of the AFA awarded while male athletes received 59.5% of the AFA awarded. Although female athletes during the 2009-2010 school year made up 36.4% of the athletes, they received 40.5% of the AFA whereas male athletes made up 63.6% of the athletes, but received 59.5% of the AFA. Therefore, during the 2009-2010 school year, a disparity of 4.1% existed in favor of the female athletes.

2009-2010 SCHOOL YEAR					
GENDER	NUMBER OF ATHLETES	AFA RECEIVED	% OF TOTAL ATHLETES	% OF TOTAL AFA RECEIVED	DIFFERENCE
Female	106	\$ 798,258	36.4%	40.5%	+4.1%
Male	185	\$1,161,173	63.6%	59.5%	-4.1%
<i>TOTAL</i>	<i>291</i>	<i>\$1,950,431</i>	<i>100%</i>	<i>100%</i>	<i>N/A</i>

During the 2010-2011 school year, SELU reported participation rates of 116 female athletes and 172 male athletes for a total of 288 athletes. Thus, for the 2010-2011 school year, 40.3% of the athletes were female and 59.7% of the athletes were male. The 116 female athletes received a total of \$878,147 in AFA while the 185 men received a total of \$1,190,387 in AFA for a total of \$2,068,534 of AFA received by male and female athletes. The female athletes received 42.5% of the AFA while the male athletes received 57.5% of the AFA. Although female athletes during the 2010-2011 school year made up 40.3% of the athletes, they received 42.5% of the AFA whereas male athletes made up 59.7% of the athletes, but received 57.5% of the AFA. Therefore, during the 2010-2011 school year, a disparity of 2.2% existed in favor of the female athletes.

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<sup>1</sup> In assessing the awarding of financial assistance, OCR utilizes an unduplicated count of male and female athletes (*i.e.*, only counts athletes who participate in more than one sport once).

<sup>2</sup> When reviewing SELU's list of scholarship expenses, a separate line item was included for students who were in their fifth year of college and receiving financial assistance; some only needed a course or two to graduate. While these athletes were accounted for in the participation totals, the money they received was not included; hence, the total amounts awarded to fifth-year students was added in OCR's calculation totals of athletic financial assistance awarded to both male and female athletes.

2010-2011 SCHOOL YEAR					
GENDER	NUMBER OF ATHLETES	AFA RECEIVED	% OF TOTAL ATHLETES	% OF TOTAL AFA RECEIVED	DIFFERENCE
Female	116	\$ 878,147	40.3%	42.5%	+2.2%
Male	172	\$1,190,387	59.7%	57.5%	-2.2%
<i>TOTAL</i>	288	\$2,068,534	100%	100%	N/A

OCR determined that the differences in athletic financial aid and athlete participation rates were greater than one percent for the entire athletic scholarship budget in favor of the women. For the final year under review, the 2010-2011 school year, a disparity of 2.2% existed in favor of female athletes that funded 2.5 additional scholarships for women. As mentioned above, institutions may be found in compliance if any resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. Then, if any unexplained disparity in the scholarship budget for athletes of either sex is one percent or less for the entire budget for athletic scholarships, there will be a strong presumption that such a disparity is reasonable and based on legitimate and nondiscriminatory factors. Given the University’s request to resolve the review prior to the completion of OCR’s investigation, OCR has not evaluated whether the current 2.2% disparity is the result of legitimate, nondiscriminatory factors that may explain the disparities in athletic scholarships awarded to male and female athletes. Such factors may include SELU’s legitimate efforts to comply with Title IX participation opportunities requirements. For 2010-2011, OCR calculated that, given the 22% disparity between the participation of female students in SELU’s athletic program and their enrollment, SELU would need to create approximately 169 additional athletic opportunities for female athletes to achieve proportionality without cutting any athletic opportunities for male athletes.<sup>3</sup> Recruiting female athletes and providing them with scholarships is one way to add participation opportunities for female athletes. As the female participation rate increases, additional scholarships for women would be required for the University to demonstrate that it is in full compliance with its Title IX obligation to provide athletic scholarships in a non-discriminatory manner.

## II. Other Athletic Benefits and Opportunities

As noted above, the Title IX regulation at 34 C.F.R. § 106.41(a) provides that 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 intercollegiate athletics program offered by a recipient. In ensuring compliance with this section of Title IX, OCR examined the following components of the University’s program to ensure that it was providing female students an equal opportunity to benefit from its intercollegiate athletics program, in accord with 34 C.F.R. § 106.41(a) and (c), as well as the Policy Interpretation mentioned above. OCR specifically examined the following areas:

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<sup>3</sup> The University has indicated its intention to come into compliance with Part Three of the Three-Part Test by demonstrating to OCR that it is fully and effectively accommodating the athletic interest and abilities of its female students.

1. Equipment and supplies, in accord with 34 C.F.R. § 106.41(c)(2);
2. Scheduling of games and practice times, in accord with 34 C.F.R. § 106.41(c)(3);
3. Travel and per diem, in accord with 34 C.F.R. § 106.41(c)(4);
4. Opportunity to receive academic tutoring and assignment and compensation of tutors, in accord with 34 C.F.R. § 106.41(c)(5) & (6)
5. Opportunity to receive coaching and in the assignment and compensation of coaches, in accord with 34 C.F.R. §106.41(c) (5) & (6)
6. Provision of locker rooms, practice facilities, and competition facilities, in accord with 34 C.F.R. § 106.4 (c)(7).
7. Provision of medical and training facilities and services, in accord with 34 C.F.R. §106.41(c)(8);
8. Provision of housing and dining facilities and services, in accord with 34 C.F.R. § 106.41(c)(9);
9. Publicity, in accord with 34 C.F.R. § 106.41(c)(10);
10. Support Services, in accord with 34 C.F.R. § 106.41(c); and
11. Recruitment of Student Athletes, in accord with 34 C.F.R. § 106.41(c).

In examining each program component, OCR examines whether the same or similar benefits or services are provided for all students or, if not, whether the differences negatively affect students of one sex, resulting 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, we consider 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 they 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.

### **1. Equipment and Supplies - 34 C.F.R. § 106.41(c)(2)**

The Title IX regulation requires recipients to provide equal athletic opportunity for members of both sexes regarding the provision of equipment and supplies. The Policy Interpretation states: “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 five factors to be assessed in determining compliance: (1) quality

(2) amount, (3) suitability (4) the availability of equipment and supplies and (5) maintenance and replacement policies and practices of the institution regarding equipment and supplies. The program component of equipment and supplies includes an analysis of, but is not limited to: uniforms and other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and minor conditioning and weight training equipment.

*Quality*

As part of this investigation, OCR interviewed the head coaches for every men’s and women’s team and many of the assistant coaches as well as players from each men’s and women’s team, and inspected all of the equipment and supplies provided to each men’s and women’s team to determine whether any significant disparities existed regarding the equipment and supplies provided to the women’s teams and the men’s teams. OCR found that the equipment and supplies provided by SELU were generally equivalent between teams. All of the teams received relatively equal caliber equipment and there were no substantiated concerns from athletes or coaches that equipment or supplies were purchased or distributed by SELU in an unequal manner between the men’s and women’s teams in any sport. As such, OCR’s investigation did not reveal any significant disparities related to any of the five assessment factors listed above.

The following table provides a summary of the equipment and supplies provided by SELU to each sport (differences in bold):

<b>SPORT</b>	<b>MEN</b>	<b>WOMEN</b>
<b>Football</b>	Home and away uniforms, protective gear, helmets, practice and game footballs, cleats, practice jerseys	N/A
<b>Basketball</b>	Home and away uniforms, shoes, socks, warm-ups, basketballs, ankle braces, workout shirts and shorts	Home and away uniforms, shoes, socks, warm-ups, basketballs, ankle braces
<b>Baseball/ Softball</b>	Home and away uniforms, cleats, socks, helmets, bats, hats, baseballs, workout shirts and shorts	Home and away uniforms, cleats, socks, helmets, bats, visors, softballs
<b>Golf</b>	Golf shoes, golf shirts, slacks, vest/pullover, rain suit, hats, shorts, workout shirts and shorts, range golf balls	N/A
<b>Volleyball</b>	N/A	Home and away uniforms, shoes, knee pads, socks, warm-ups, practice and game volleyballs, poles and nets, ankle braces, practice shirts
<b>Soccer</b>	N/A	Home and away uniforms, socks, compression shirts, cleats, shin guards, gloves (goalies only), practice and game soccer balls, training cones
<b>Tennis</b>	N/A	Home and away uniforms, hats/visors, shoes, workout shirts and shorts, rackets, practice and game tennis balls, water bottle, sweat bands
<b>Track/ Cross-Country</b>	Competition uniforms, training shoes, competition shoes, t-shirts, wind suits, track & field equipment (javelin, etc.)	Competition uniforms, training shoes, competition shoes, t-shirts, wind suits, track & field equipment (javelin, etc.)

Regarding the quality of equipment and supplies provided to men's and women's programs, all of the teams received relatively equal caliber equipment and supplies, with a few exceptions. The men's golf team, women's basketball team and women's tennis teams had equipment and supplies that were rated as "excellent" by both the coaches and athletes. OCR's onsite visit confirmed the comparable quality of the equipment and supplies for the men's golf team, women's basketball team, and women's tennis teams. All of the remaining men's and women's teams had equipment and/or supplies that were rated by the coaches or players or both as "adequate." OCR's onsite visit confirmed the quality of the equipment and supplies for the remaining teams was at least comparable. Overall, regarding the first factor of quality, OCR concluded that all of the teams received relatively equal caliber equipment and supplies.

#### *Amount*

Regarding the amount of equipment and supplies provided, all of the teams received relatively equal amounts of equipment and supplies. All of the coaches stated that they believed their budget for equipment and supplies was "adequate," with the exception of the baseball and softball coaches who stated that they relied upon additional money raised from fundraisers (e.g., selling tickets at New Orleans Saints football games) and boosters, respectively, to help pay for the necessary equipment and supplies. However, the coaches for both the baseball and the softball team did not express any significant concerns about the money their teams received or their ability to provide sufficient equipment and supplies to field a competitive team. OCR determined that all of the men's and women's teams received relatively equal amounts of equipment and supplies.

#### *Suitability*

Regarding the suitability of equipment and supplies provided to the men's and women's program, OCR determined that all of the teams received suitable equipment and supplies which met the applicable requirements of the governing/sanctioning body for that sport. OCR's examination of the equipment and supplies provided to all of SELU's men's and women's teams showed that all of the teams received suitable equipment and supplies.

#### *Availability*

With respect to the availability of equipment and supplies, no athlete or coach interviewed by OCR cited any concern regarding the availability of their team's equipment and supplies. The athletes and coaches for both men's and women's teams stated that the equipment and supplies for their team was either locked up and handled by staff only to ensure those items can be tracked, available during the season, or available year-round. OCR determined that all sports, regardless of sex, were provided with substantially equivalent access to equipment and supplies.

#### *Maintenance and Replacement*

Regarding the final factor (maintenance and replacement policies and practices), OCR examined whether teams were provided with maintenance services (such as equipment storage) as well as replacement schedules. OCR determined that, with few exceptions, most of the men's and

women's teams have either coaches or student managers who wash the team's clothes, except for men's and women's cross-country and track, women's tennis, men's golf, and women's volleyball where the players wash their own clothes.

While SELU does not have a formal written policy regarding the replacement of equipment and supplies, all of the head coaches informed OCR that items were replaced on an "as needed" basis. OCR reviewed the replacement schedule and determined that the men's and women's teams have comparable maintenance and replacement schedules.

With respect to equipment storage, the women's tennis, men's and women's track and men's and women's cross-country teams do not have any equipment storage, but none of the coaches for those teams indicated that this created any issues. The women's tennis coach said the players keep possession of the rackets. The track and cross-country coach said the teams have several rooms under the football stadium for track equipment and a portion of the soccer/softball facility for throwing equipment. OCR's investigation revealed that the women's volleyball team transports certain equipment (such as volleyballs) back-and-forth between the University Center and Pennington Center every day for practice during the spring when the team practices in the Pennington Center, but larger items (such as the net poles) are stored onsite in the Pennington Center. OCR's investigation revealed that the women's volleyball team has a storage cabinet in a room immediately adjacent to their locker room that contains sufficient room to hold the team's uniforms.

The baseball coach told OCR that the equipment storage area for his team was too small. However, OCR's visual inspection during the onsite visit showed that the baseball team's storage area, while not overly large, provided sufficient space to store all of the team's equipment. Overall, regarding equipment storage, OCR's review shows that all of the men's teams have sufficient space to store equipment and all of the women's teams had sufficient equipment storage space.

Based on the information provided above concerning the quality, amount, suitability, availability, and maintenance and replacement of equipment and supplies provided to the men's and women's teams, OCR determined there were slight differences favoring either men's or women's teams. The differences found by OCR were: (1) a slight difference in favor of the women's teams regarding the quality of the equipment and supplies provided because two women's teams received equipment and supplies that were rated as "excellent," and only one men's team received equipment and supplies that were rated as "excellent," (2) a slight difference in favor of male athletes with respect to laundry services because three women's teams have players who wash their clothes, but only two men's teams have players who wash their own clothes, and (3) a slight difference in favor of male athletes with respect to equipment storage because one women's team (women's volleyball) must transport some of its smaller equipment (volleyballs) across the street during spring practices. OCR considered these differences and information obtained through interviews of coaches and athletes and determined that the three items listed above constitute differences, but were not significant enough to negatively affect students of one sex, and, therefore did not result in a disparity. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the provision of equipment and supplies.

## **2. Provision of locker rooms, practice and competitive facilities -- 34 C.F.R. § 106.41(c)(7)**

The Title IX implementing regulation, at 34 C.F.R. § 106.41(c), requires a recipient to provide equal athletic opportunity for members of both sexes, including at 34 C.F.R. § 106.41(c)(7), in the provision of locker rooms, practice and competitive facilities. In determining compliance in the provision of locker rooms, practice and competitive facilities, OCR specifically assesses the factors outlined in the Policy Interpretation: the quality and availability of locker rooms and the quality, availability, exclusivity, maintenance and preparation of practice and competitive facilities. OCR reviews the quality and availability of SELU's athletic facilities provided for practice and competitive events; the exclusivity of use of facilities provided for practice and competitive events; the availability of locker rooms; the quality of locker rooms; the maintenance of practice and competitive facilities; and the preparation of facilities for practice and competitive events.

As part of the investigation, OCR examined the policies and procedures used by SELU to allocate locker rooms, practice and competitive facilities (Athletics Policy) and also interviewed the head coaches for all of the men's and women's teams and confirmed that the Athletics Policy treats all teams in a consistent and non-discriminatory manner. Additionally, OCR interviewed coaches and players from all of the women's and men's teams. Further, in September 2013, OCR staff conducted a visual inspection of all practice and competitive facilities used by the men's and women's teams, including offsite facilities as well as a new facility completed in January of 2012 that houses the men's track/cross-country team, the women's track/cross-country team, and the women's tennis team.

Regarding the quality and availability of the practice and competitive facilities for the men's and women's teams, OCR identified significant compliance concerns regarding the practice and competitive facility used by the women's soccer team, which was rated by the coach, players and OCR's inspection as "poor." OCR's investigation shows the practice/competitive field used by the women's soccer team has significant drainage issues that have resulted in poor field conditions. As a result, the women's soccer team could not use its practice/competitive facility between 25-50% of the time during the 2009 and 2010 soccer seasons due to field conditions after rainstorms. Also, during the 2009 and 2010 seasons, the women's soccer team was forced to play six of the team's twenty home games (30%) at an alternative youth recreational soccer field, which does not meet the NCAA's size/field of play dimensions requiring the head coach to seek and obtain a waiver from each opposing coach prior to using the alternative soccer field to avoid a forfeit. Additionally, the alternative soccer field lacks many basic amenities (*e.g.*, no area for the women's soccer team to change into their practice/competitive uniforms, no scoreboard, no public address system, a small wooden bench for the players to use during games, and only one portable restroom which requires players to walk across an adjacent soccer field to use.) During the 2009 and 2010 seasons, if the women's soccer team held its practices or games on the turf area inside the football stadium, it had to do so either very early in the morning or at night because the University's football team has priority use of the football stadium while that team is in-season (the same season as the women's soccer team).

Both the coaches and the players also believe that the poor field conditions were a source of potential and actual injuries to the players. For example, during the 2009 season, one of the female soccer players was injured while playing on the muddy field when she planted her foot to turn, but her cleat got stuck in the mud. That player missed three games and the coaches believe this injury is directly related to the poor field drainage. In addition, there are additional safety issues related to a wooden berm that runs along the sideline drains near the soccer field, which also led to the injury of a different player in 2010.

With respect to the quality of the locker rooms provided to the male and female athletes, information from the coaches, players, and OCR's onsite shows the quality of the locker rooms for most of the men's and women's teams was adequate. OCR also inspected a new facility completed in January of 2012 that houses the men's track/cross-country team, the women's track/cross-country team, and the women's tennis team. This new facility includes new locker rooms for those three teams, six new tennis courts with high intensity lighting, and a new track facility with sufficient room for all track events, except the hammer throw, which is competed at the North Campus Throwing Facility. OCR determined that the new locker rooms provided to the men's track and cross-country teams, women's track and cross-country teams, and women's tennis teams are all rated as "excellent" by OCR's onsite inspection and the head coaches for those teams. One item to note regarding this factor is that, although the locker room for the women's soccer team was rated as "excellent" overall, OCR's onsite visit confirmed that the team has no showers in their locker room. However, the soccer players are able to use the locker room for the softball team that is in the same building and the two sports are not in season at the same time so there are no conflicts with access to the locker room for softball when the soccer team is in season and vice versa. The difference does not appear to be significant enough, by itself, to create a disparity for this factor relating to locker rooms, practice and competitive facilities; however, when combined with the significant concerns identified above with respect to the quality of practice and competitive facilities, OCR identified a compliance concern with respect to this component. These issues are sufficient to create a significant disparity in favor of male athletes with respect to the quality of the practice and competitive facilities for female athletes.

### **3. Scheduling of Games and Practice Time - 34 C.F.R. § 106.41(c)(3)**

In assessing whether SELU is providing male and female athletes equivalent benefits and opportunities with respect to the scheduling of games and practice time in compliance with 34 C.F.R. § 106.41(c)(3), OCR considers the number of competitive events per sport, the time of day that competitive events and practice opportunities are scheduled, the number and length of practice opportunities, and the opportunities to engage in pre-season and post-season competition.

#### *Number of Competitive Events*

OCR considered the total number of competitive events provided for each intercollegiate athletics team, and compared the number of competitive events among similar sports as well as

the number of competitive events allowed under NCAA guidelines for each sport.<sup>4</sup> A summary of OCR’s factual findings regarding the number of regular season competitive events in which each team participated during the 2010-11 school year are reflected in the chart below:

<b>Sport</b>	<b>Number of Competitive Events/Dates of Competition</b>	<b>NCAA Guideline</b>	<b>% of NCAA Guideline</b>
Men’s Football	11	11 <sup>5</sup>	100%
Men’s Basketball	28	29	97%
Men’s Baseball	55	56	98%
Men’s Golf	23	24	96%
Men’s Track/Field	14	18	78%
Men’s Cross Country	5	7	71%
<b>Men’s Average</b>			<b>90%</b>
Women’s Basketball	28	29	97%
Women’s Softball	52	56	93%
Women’s Volleyball	28	28	100%
Women’s Soccer	19	20	95%
Women’s Tennis	22	25	88%
Women’s Track/Field	14	18	78%
Women’s Cross Country	5	7	71%
<b>Women’s Average</b>			<b>89%</b>

When comparing the number of competitive events in which each SELU team participated to the number of competitive events permitted per NCAA guidelines for the sport, OCR determined that SELU is offering equivalent opportunities to male and female athletes. During the 2010-11 school year, men’s teams participated in 90% of NCAA maximum allowable contests permitted per sport under NCAA guidelines. Women’s teams participated in 89% of the maximum allowable contests; however, OCR notes that the women’s softball team was scheduled to participate in two additional games that were canceled. If the two cancelled games had been played, the percentage of participation for women’s teams would have increased to 89.3%.

Among all of the coaches and athletes interviewed by OCR, none expressed any concern regarding the number of competitive opportunities available for their team. OCR found that the difference in the number of competitive events between male and female sports was negligible

*Number, Length, and Time of Day of Practice Opportunities*

Data received from SELU indicates that all men’s and women’s teams have regularly scheduled in-season practices. While the length and time of day for practices varies by team, OCR found the number and length of practices for men’s and women’s teams are comparable. Most teams

<sup>4</sup> For purposes of this analysis, OCR considered the regular season competitive events participated in by each team during the 2010-11 school year.

<sup>5</sup> Because SELU is an FCS team, 11 games are permitted per NCAA guidelines except that in years in which there are 14 Saturdays between the first permissible playing date through the last playing date in November, 12 games are permitted. For the 2010 season, 11 games were permitted.

report practicing on average 2 to 3 hours approximately 5 days a week. Coaches and athletes interviewed by OCR reported that the number and length of practice sessions are sufficient.

The time of day teams practice also varies by team. The following teams report practicing in the afternoons: women's volleyball, women's tennis, women's basketball, softball, women's cross country and track and field, men's cross country and track and field, football, baseball, and men's golf. One women's team – soccer – does schedule some morning practices, and one men's team – basketball – practices from approximately 11:15 a.m. – 1:30 p.m. during the week.

When interviewed by OCR, the women's volleyball and men's and women's basketball coaches reported that because the teams use the same facility (University Center) for practice sessions, the teams did have to coordinate with each other regarding use of the facility. However, the coaches reported that there is no conflict in scheduling practices and that scheduling use of the University Center is fair.

Some athletes interviewed by OCR expressed concern regarding practice conflicting with meal times. Specifically, the men's basketball athletes reported that, because they practice during lunchtime, they have to rush to make lunchtime at the cafeteria, and the women's softball athletes also reporting being rushed to eat lunch to get to practice by 2:00 p.m. In addition, the women's basketball and men's track and field coach and athletes reported that they may miss some classes when the team travels, and the women's tennis athletes and Assistant Women's Softball coach reported that some athletes may occasionally miss a lab because of practice. Although more female athletes report missing classes or labs, the athletes interviewed by OCR indicated that this was a rare occurrence. Overall, OCR determined that SELU is providing equivalent opportunities to male and female athletes regarding the number, length, and time of day of practice opportunities.

#### *Time of Day that Competitive Events are Scheduled*

OCR also reviewed the time of day competitive events are scheduled. OCR determined that the times of competitive events were equivalent for both men's and women's teams, and OCR's review of team schedules and interviews with coaches and athletes indicated that equivalent opportunities were provided for both male and female athletes to compete during "prime time" for their respective sports.

OCR first compared similar men's and women's teams (basketball, cross country, track and field, and softball/baseball). As an initial matter, OCR notes that the men's and women's cross country and track and field teams travel together and compete together. Accordingly, OCR determined that the teams have identical competition schedules. OCR's investigation revealed that cross country and track and field meets are generally scheduled on the weekends, with coaches and athletes reporting in interviews that this was appropriate for the sport. OCR notes that coaches and athletes did report that, because SELU did not have a track at the time of the interviews, they did not have the opportunity to host "home" meets and did not have many spectators. However, OCR determined that this affected both male and female athletes equally. Subsequent to these initial interviews, SELU completed work on its new track facility and OCR

confirmed with coaching staff that this scheduling issue has been corrected for both men's and women's track teams.

With regard to men's and women's basketball, interviews with SELU coaches revealed that "prime time" is considered weekday evenings and weekend afternoons. OCR reviewed the men's and women's basketball schedules, and confirmed that both men's and women's basketball teams competed at these times. In addition, interviews with both men's and women's basketball athletes revealed that both teams compete during "prime time" and are provided the opportunity to compete before an audience. Finally, with regard to men's baseball and women's softball, the men's baseball coach reported to OCR that "prime time" is considered Wednesday evenings at 6 p.m., while the women's softball coach reported that he considers "prime time" to be Saturday afternoons. OCR's review of both teams' schedules during the 2011 season revealed that the teams were afforded the opportunity to compete during "prime time" for their sports. In interviews with OCR, both baseball and softball athletes reported that they competed during "prime time" and were given the opportunity to compete before an audience.

The SELU head football coach and men's football athletes reported that "prime time" for football is considered Saturday evenings, and the team does compete during this time. OCR's review of the team's schedule for the 2010-11 season revealed that the team did compete during "prime time." The SELU men's golf coach reported to OCR that tournaments are held on weekdays and the team competes during this time; however, there are generally not many spectators. The men's golf athletes interviewed by OCR also reported that, because tournaments are scheduled on weekdays, spectators are limited. The women's tennis athletes reported that weekends are considered "prime time" for their sport, but that because at the time of the interviews they did not have courts on campus, they did not have many spectators; however, they did have the opportunity to compete during prime time.

The women's soccer athletes reported that "prime time" is considered Fridays at 3 p.m. and Saturdays at 1 p.m. The athletes further reported that their schedule affords them the opportunity to compete at this time and before spectators. Finally, the women's volleyball athletes reported that weekday evenings and weekend afternoons are considered "prime time" for volleyball, and that all of their events are scheduled during "prime time."

Based on the above, OCR determined that both men's and women's sports were afforded the opportunity to compete during "prime time." OCR notes that a few teams did report not having many spectators – specifically, cross country/track and field, men's golf, and women's tennis. However, OCR determined that the lack of spectators affected men's and women's sports equally. Accordingly, OCR concluded that SELU is offering equivalent opportunities for men's and women's teams with regard to the scheduling of competitive events.

#### *Pre-and Post-Season Competition*

OCR also reviewed the opportunities provided to male and female athletes to engage in pre- and post-season competition. During 2010-11, the following SELU sports teams reported engaging in pre-season competition: women's basketball, women's softball, and men's basketball. The Head Track and Field Coach reported to OCR that both male and female teams competed in a

pre-season invitational during the 2009-10 year, but did not compete in a pre-season invitational during 2010-11 due to budget cuts. Accordingly, 2 women's teams and one men's team competed in pre-season competition in 2010-11.

According to SELU, no team or individual athlete who has qualified for post-season competition has been denied the opportunity to participate. From 2009-10, the following teams have represented SELU in post-season competition, either by team or in individual events: women's track and field and cross country, women's basketball, women's tennis, women's soccer, baseball, men's cross country and track and field, men's basketball, and men's golf. Accordingly, a total of 6 women's teams and 5 men's teams have competed in post-season competition, and no coach or athlete reported to OCR that they have not been permitted to engage in post-season competition despite qualifying for such competition.

Overall, OCR found that the SELU is providing equivalent opportunities for male and female athletes to compete in pre- and post-season competition, and any differences between the numbers of male and female teams competing in pre- and post-season competition were negligible.

To summarize, OCR determined that SELU is providing equivalent benefits and opportunities to female and male athletes in the number of competitive events per sport, the time of day that competitive and practice opportunities are scheduled, the number and length of practice opportunities, and the opportunities to engage in pre-season and post-season competition. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the provision of scheduling of games and practice times.

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

In assessing compliance in this area, OCR considers modes of transportation, housing and dining arrangements furnished during travel, length of stay before and after competitive events, and per diem allowances for the 2009-2010 and 2010-2011 school years. OCR examined SELU's policies and procedures related to travel and per diem ("Policy"), the Athletic Travel Policies and Procedures for the University of Louisiana System ("PPM"), the State of Louisiana Travel Guide ("TG"), travel expense reports, and travel budget worksheets. In addition, OCR conducted interviews with University employees and student athletes related to travel and per diem.

The evidence established per SELU's Policy in place for the 2009-2010 and 2010-2011 school years, the Director of Intercollegiate Athletics is responsible for overall administration of the Policy; however, the coaches for each team are responsible for developing travel plans for their respective teams.

##### *Modes of Transportation*

According to the Policy, the general means of transportation for teams with more than fifteen (15) members in the travel party is by bus. The Policy also provided that tennis, golf, cross country and in certain situations track and field teams may use vans due to the smaller travel

squad size. In choosing the mode of transportation, the Policy listed the following criteria: safety, expense, availability, distance, and number of days travel. Moreover, the Policy provided that University vehicles (*e.g.*, autos, vans, buses, etc.) were to be used whenever feasible; charter buses or leased vans are used when distance and time allow; and airline transportation is reserved for long distance travel or to minimize number of class and study days missed.

Charter buses were utilized by baseball, women's basketball, football and women's soccer to travel for away games. Each of these teams has more than 15 members in their travel party per Policy guidelines. Moreover, these teams procured the charter bus from the same company, which ensures prices to be the same when travelling similar distances. Football used two charter buses due to the size of the players and the amount of equipment. In addition, the evidence showed football has about 90 players, which is three to four times more than the other teams. Thus, the space provided by the charter bus is suitable for a team of 90 members.

A number of teams traveled by using either van or charter bus during the respective sport's season. Men's basketball, men's and women's track and field, softball, women's volleyball, women's tennis, and men's golf used vans and charter buses for the 2009-2010 and 2010-2011 school years to travel to away games.<sup>6</sup> Men's and women's track and field informed OCR it used a van to transport the pole vault even when the team traveled by charter bus. However, women's softball athletes informed OCR that the team is now using charter buses for the 2010-2011 school year. And only two teams solely utilized vans: men's golf and women's tennis. Per the Policy, van use was appropriate for these smaller size travel teams such as men's golf and women's tennis.

In addition, minimal air travel occurred during the 2009-2010 and 2010-2011 school years. Men's basketball, football, baseball, women's tennis, and men's and women's track and field, each flew once each year to participate in competitive events. Men's golf traveled by plane a total of four times due to regional and championship play.

In examining the evidence, OCR is unable to ascertain a pattern of disparity favoring one gender over the other related to this factor. The type of transportation services provided were equivalent for men's and women's teams.

### *Housing*

OCR found men's and women's teams generally stayed at moderately priced hotels of similar quality. However, OCR found men's golf and women's tennis on occasion lodged at high-end quality hotels. During the 2009-2010 and 2010-2011 school years, the men's golf expense reports showed the team stayed at high-end quality hotels on three occasions. The head coach for men's golf informed OCR the team lodged at the hotel suggested and/or provided by the host

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<sup>6</sup> With the exception of softball, which has over 15 members in the travel party, and men's and women's track and field/cross country, for which the travel party number will vary due to the type of competition, these teams have less than 15 people per Policy guidelines for use of vans. The men's and women's track and field/cross country student athletes stated charter buses were used for long distance travel. The coaches for softball and men's and women's track and field stated the teams used vans because the vans were economical.

team. The head coach for men's golf further informed OCR the rates for the hotels were discounted and included in the entry fee. During the 2009-2010 and 2010-2011 school years, the women's tennis expense reports showed the team stayed at high-end quality hotels on six occasions. Also during the 2010-2011 school year, the football team and the women's basketball team stayed at high-end quality hotels once and the baseball team stayed at high-end quality hotels twice.

OCR also examined the number of student-athletes assigned per room. According to the Policy, the number of student-athletes in a room should not be less than two or more than four. The Policy further provides various factors may influence the number of student-athletes in a room (*i.e.*, budget constraints and size of student athletes), where the Director of Athletics and Senior Woman Administrator will monitor team lodging practices as to fairness and equity between sport programs and make adjustments on a case-by-case basis. In examining this factor, OCR found on average three student-athletes were assigned per room for the men's and women's teams and there was not an apparent pattern favoring one gender more than the other.

#### *Per Diem Allowance and Dining Arrangements*

The Policy for the 2009-2010 and 2010-2011 school years provided that student-athletes may be provided with per diem meal allowance not to exceed \$25.00 per day (*i.e.*, \$7.00 - breakfast, \$8.00 - lunch and \$10.00 - dinner). The Policy also permitted coaches to arrange for sit-down meals in lieu of giving a meal allowance. In addition, providing a per diem and sit-down meal is permissible under the Policy as long as the daily total does not exceed the per diem allowance.

OCR examined the per diem allowance for each team. Either the coach or the assistant coach for each team was responsible for preparing the budget. The coach used his/her discretion in determining the amount to allocate for the per diem allowance. In 2009-2010, women's basketball, football, men's golf, and women's soccer on occasion budgeted more than the \$25 per day permitted under the Policy in their Team Travel Budget Worksheet. The actual expense reports from these teams indicate: football exceeded per diem twice; men's golf exceeded per diem twice; women's soccer exceeded per diem once; and women's and men's basketball exceeded per diem once. Women's volleyball did not exceed the per diem allowance permitted by the Policy.

OCR also noted several instances where the women's tennis spent above the Policy per diem allowance. Women's tennis exceeded the per diem allowance for each away trip. OCR found women's tennis received an average per diem of \$36.31. The women's tennis head coach informed OCR the \$25 per diem was not enough to cover the meals. He also informed OCR he followed the state regulations, which allows more money than the Policy. According to the Policy, all expenses incurred by a sport's team when traveling must be within the budgetary constraints and Departmental, University, SLC and NCAA guidelines. To that effect, the PPM<sup>7</sup> states team meals are not to exceed Tier III rate plus 25%. According to the TG, the Tier III per diem rate is \$52. Thus, although women's tennis did not follow the per diem Policy guidance,

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<sup>7</sup> This is the athletic travel policy issued by the University of Louisiana System and uses the travel regulations as contained in the Division of Administration Travel PPM-49.

the Policy permitted for expenses not to exceed the amounts cited by other guidelines. The women's tennis team did not exceed the other guidelines' per diem allowance.

When traveling, OCR found the men's and women's teams were generally provided with similar dining arrangements. The coaches for baseball, men's basketball, women's basketball, football, men's golf, women's soccer, women's tennis and women's volleyball informed OCR their teams ate in groups and ate at buffets, cafeteria style restaurants or sandwich shops to moderate quality restaurants.<sup>8</sup> The student-athletes for these teams confirmed the same. The softball head coach and softball student-athletes informed OCR there were times the team ate as a group and at other times the team received the per diem. The men's and women's track and field/cross country coach and men's and women's track and field student-athletes informed OCR the travel squad received the per diem at the competition.

To summarize, OCR found on average the women's and men's teams expended per diem amounts were below the allotted per diem amounts permitted in the policy. On average, both male and female teams provided per diem for to their athletes within the \$25 per day limit with the exception of women's tennis, which had only eight female athletes on the team. There were no significant variations among the teams in the amount expended for meals. Overall, there was a small difference in the amount of per diem allocated favoring women's teams; however, this difference does not create a disparity as the above per diem allocation was provided only to the women's tennis team, which had less than 10 of the University's over 100 female athletes. Moreover, during OCR's on-site visit to the University in September 2013, University officials stated that they had imposed stricter monitoring methods to ensure that no teams exceed the established per diem amounts in the future. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the provision of travel and per diem allowance.

##### **5. Opportunity To Receive Academic Tutoring Assignment and Compensation of Tutors - 34 C.F.R. § 106.41(c)(5) & (6)**

Compliance in the opportunity to receive academic tutoring and the assignment and compensation of tutors component is determined by examining the following factors, per the Policy Interpretation, (1) Tutor Availability, including the availability of tutoring and procedures and criteria for obtaining tutorial assistance; (2) Tutor Qualifications and Experience, including tutor qualifications, and training, experience, and other qualifications; and (3) Rates of Pay and Employment Conditions, including, hourly rate of payment by nature of subjects tutored, pupil loads per tutoring season, tutor qualifications; experience; and other terms and conditions of employment.

For purposes of the analysis of the tutoring component, OCR considered data submitted by the University and collected data for both the 2009-2010 school year, and the 2010-2011 school year.

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<sup>8</sup> However, the documents submitted by the University indicate women's tennis student-athletes received the per diem.

### *Availability*

According to SELU's website pertaining to academic support services for student athletes, at [www.lionsports.net](http://www.lionsports.net), tutorial assistance is available to all University student athletes in the areas of academic support (subject, group, and exam tutoring), including structured learning (study halls), academic mentoring and workshops. This assistance is provided through the Academic Center. The Academic Center is specialized to assist the needs of student athletes to ensure their academic success and offers tutorial services in the evenings from 6:00 - 9:00 p.m. The website identifies the hours of operation of the Academic Center and includes telephone numbers and other contact information for the employees of the Center. Student athletes also have the option to seek tutoring from the Center for Student Excellence (CSE), which is open to all students and provided Monday through Friday, 8:00 a.m. - 4:30 p.m. The Academic Center also offers specialized services for student athletes via the Academic Support for Athletes Program (ASAP). The ASAP offers academic advising, support, and monitoring of academics for student athletes. Both the Academic Center and the ASAP provide individual and group peer tutoring. SELU coaching staff and administrative staff officials reported to OCR that student athletes are encouraged to utilize the Academic Center and/or the CSE services and coaches monitor the student athlete's progress and determine if students are in need of academic support services, such as tutoring.

As previously mentioned, SELU reported that tutoring is available to all students during normal business hours during the week at the CSE and evening tutoring is provided through the Academic Center for both male and female student athletes. The evidence revealed that tutoring services are available to students during the fall, spring, and summer terms. According to the SELU's Athletics Policies and Procedures Manual (Manual), the purpose of the Academic Center is to provide student athletes with a "unique place in which to learn and develop better study skills." The Manual further sets forth that the Academic Center requires all freshman student athletes to complete study sessions each week, and that all student athletes must complete additional study sessions if their cumulative GPA is below 2.5. OCR's investigation found that the Academic Center works very closely with the AD and coaching staff in monitoring student athletes' progress and there is a continuing assessment of the student's academic needs, including the need for tutoring services. In addition, the Academic Center staff work as advocates for student athletes and help student athletes balance their academic responsibilities with their responsibilities as a participant in the University's intercollegiate athletics program.

The SELU reported that for the 2009-2010 school year and the 2010-2011 school year, there were no shortages of tutors available for student athletes. In addition, if a particular tutor is not available in a subject through the Academic Center, the student athlete is assisted with obtaining tutoring services through CSE. The evidence revealed established tutor schedules for the 2009-2010 and 2010-2011 school years. OCR's investigation found that the SELU policies and procedures for availability of tutoring services are consistent for both academic school years considered for this analysis, with no changes noted in any procedures that would negatively impact athletes of one sex or the other.

*Qualifications, Experience, Rates of Pay, and Employment Conditions*

With respect to tutor qualifications, experience, rates of pay and employment conditions, the University reported that tutors provided through the Academic Center and CSE are undergraduate and graduate students who are hired on a semester basis by SELU through the CSE. The evidence revealed that all tutors are paid the same rate of pay, an hourly rate of \$8.00, which is paid by the CSE. Tutors can be hired to provide tutoring services for the Academic Center and/or the CSE, and either tutoring position does not differentiate in rate of pay, or how tutors are paid. A review of the 2009-2010 and 2010-2011 tutors for the Academic Center and CSE revealed tutors are typically undergraduate students, with some graduate students, with experience in courses they were hired to tutor in the subject. OCR found no evidence of any difference between education qualifications of tutors who aided male athletes and those that aided female athletes. The investigation found that a person interested in becoming a tutor must complete an application through the CSE and meet certain conditions of employment including: approval from their respective Department of course study for tutoring; be currently enrolled as an SELU undergraduate or graduate student; received an "A" or "B" grade in targeted courses for tutoring; have commensurate skill or experience in the subject; obtained an overall GPA of 3.0 or higher; be available to complete training sessions; be responsible, reliable, punctual; and have good interpersonal communication skills. The University reported that tutors must qualify for the position and are interviewed and hired by the CSE for available slots.

The evidence revealed that tutors are paid the same hourly rate regardless of the nature of the subjects tutored. The University reported that tutors typically work in one-on-one settings, but also provide small group tutoring sessions as well. Based on the data available at the time of the investigation, OCR was able to determine that the average tutoring hours provided per semester for student athletes during the 2009-2010 school year was approximately 39 hours a week by 13 tutors, and for the 2010-2011 school year, OCR projected the average tutoring hours per semester for student athletes would be approximately 31.5 hours a week by 10 tutors. OCR's investigation found that the SELU policies and procedures for qualifications, experience, rates of pay, and employment conditions for tutors are consistent for both academic school years considered for this analysis, with no changes noted in any tutoring employment procedures that would negatively impact athletes of one sex or the other.

SELU reported to OCR that the Center arranges tutorial and other academic support services for any student athlete who needs these services, regardless of sex. The investigation revealed that student athletes are not required to locate or pay for tutors or any other academic support services. The Center recruits, arranges, and pays the salary for all tutors. The rate of pay does not vary based on the sex of the athletes being tutored and the process for obtaining tutoring services is the same for male and female athletes.

In interviews with student athletes and coaches, both male and female student athletes and all coaches confirmed that tutorial assistance was readily available to intercollegiate athletes at the University. In addition, both athletes and coaches acknowledged the requirements of tutoring and that the coaches monitor the athletes' academic progress and attendance in study hall/tutoring services. OCR's investigation did not reveal any concerns expressed by coaches or athletes about the availability of tutoring services or concerns about the quality of tutoring

provided by the University. Further, all athletes were aware of tutoring services and how to access them. None of the male or female athletes stated that their team had encountered any problems in receiving tutorial assistance.

To summarize, OCR found no evidence of any disparities based on sex in the availability of tutoring for male and female athletes, the procedures and criteria that must be followed by male and female athletes to obtain tutorial assistance, or the qualifications of the tutors assigned to male and female athletes. The evidence further revealed that female athletes were just as likely as male athletes to have access, and to utilize tutorial assistance. In addition, OCR found no evidence to suggest that the terms and conditions of employment of the tutors differed based on the sex of the athletes being tutored. Based on the analysis of the evidence, OCR concludes that SELU is providing equivalent benefits, treatment, services and opportunities with respect to the opportunity to receive tutoring and the assignment and compensation of tutors. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the opportunity to receive academic tutoring assignment and compensation of tutors.

#### **6. Opportunity To Receive Coaching Assignment and Compensation of Coaches - 34 C.F.R. § 106.41(c)(5) & (6)**

To determine whether equivalent athletic opportunities are provided with respect to the opportunity to receive coaching and assignment and compensation of coaches component, the Policy Interpretation requires that the following three factors be assessed for coaching:

- relative availability of full-time coaches
- relative availability of part-time and assistant coaches
- relative availability of graduate assistants

The Policy Interpretation lists two factors to be assessed in determining compliance for 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 compliance for 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.

#### *Availability of Coaches*

For intercollegiate athletics programs, OCR's analysis of the availability of coaches consists of separating the women's from the men's program, determining the full-time equivalence (FTE)<sup>9</sup>

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<sup>9</sup> FTE is based on the full calendar year. A full time coach is someone with 100% coaching duties for 12 months; a half time coach is someone with 100% coaching duties for 6 months or 50% coaching duties for 12 months; a quarter time coach is someone with 100% coaching duties for 3 months or 25% coaching duties for 12 months, etc.).

of coaches in each program, computing the ratio of the FTE of coaches to the number of participants in each program, and finally comparing the ratio between men's and women's programs to determine any inequity.

For the 2009-2010 and 2010-2011 school years, SELU had a total of 32 coaches on their coaching staff. For purposes of OCR's analysis, however, four men's and women's track and cross country coaches are excluded from the analysis, as they coach a combined team, *i.e.*, the men's and women's teams have the same coaches and practice and compete at the same or similar times. Therefore, the total number of coaches examined by OCR is 28.

The evidence reveals that all head and assistant coaches are full time employees of SELU, with a 100% coaching duties for a twelve (12) month calendar year, with the exception of one men's assistant basketball coach, who is part-time for a ten (10) month period. The recipient reported that the men's assistant basketball coach was hired part-time, with his primary duties consisting of monitoring and developing academic plans and providing coaching assistance. A review of the part-time men's assistant basketball coaching position reveals 50% coaching duties. All coaches have the primary responsibilities of coaching, which also includes administrative duties, recruitment, monitoring of academics, and other job related activities, *i.e.*, fundraising, and public relations.

During the 2009-2010 and 2010-2011 school years, SELU's athletic program consisted of the men's program with four (4) men's sports, four (4) head coaches and thirteen (13) assistant coaches and the women's program with five (5) sports, five (5) head coaches and six (6) assistant coaches. OCR considered the differences in the number of available assistant coaches for the men and women programs. The evidence reveals that baseball and softball both have two full time assistant coaches. Neither women's tennis nor men's golf have an assistant coach. Both women's volleyball and women's soccer each have an assistant coach. However, men's basketball has two (2) full time assistant coaches and (1) part time assistant coach, and women's basketball has only two (2) full time assistant coaches. In addition, football has eight full time assistant coaches.

In analyzing the availability of coaches, OCR also conducted interviews with the SELU male and female athletes. OCR confirmed in interviews with female student athletes that their respective coaches are available for practice and games, and also available to them for additional needs as well (*e.g.*, guidance, counseling, additional or specialized training). Similarly, male student athletes reported coaches are available for their practices, games, and also accessible to them to address other student athlete needs. Overall, the average rating given for availability of their respective coaches by both male and female student athletes was adequate to excellent. OCR's investigation did not reveal any noted concerns by men or women athletic teams expressing the lack of availability or access to coaches for their respective sports. Further, both male and female athletes' interview responses reflected an overall satisfaction that their coaching staff is readily available to them for practices, games, and accessible to them for other needs of the team as they arise.)

For 2009-2010 and 2010-2011, the total FTE of coaches for all sports in the women's program is 11.0 in comparison to the men's program, which had a total coaching FTE of 17.5—a difference

of 6.5, in favor of the men's program. The overall ratio of coaches to athletes for 2009-2010 men's teams is 1:8.8 (149 athletes to 17 coaches) and for women's teams it is 1:7.2 (79 athletes to 11 coaches). This is a difference of 1.6 athletes per coach favoring the women's teams. In 2010-2011, there was a slight decrease in male athletes and slight increase in female athletes, which affected the overall ratio for men's teams to 1:8.6 (147 athletes to 17 coaches) and for women's teams it is 1:7.7 (85 athletes to 11 coaches), with a difference of .9 athletes per coach favoring the women's teams. The men's teams had thirteen (13) assistant coaches, with eight (8) of these coaches assigned to the football team, three (3) assigned to the basketball team and two (2) assigned to baseball. In contrast, the women's teams had two (2) assistant coaches assigned to both baseball, basketball, and one (1) assistant coach assigned to both softball and volleyball. OCR found that three out of four (75%) men's teams had at least one assistant coach and four out of five (80%) women's teams had at least one assistant coach. OCR found that the 1.6/.9 ratios of coach to athlete difference in favor of the women's teams are offset by the FTE of coaching, which favors the men's program by 6.5. OCR's investigation reveals that the difference was a reflection of the total number of athletes, 79-85 female athletes when compared to 149-147 male athletes for 2009-2010 and 2010-2011, respectively. In addition, the evidence reveals that the female athletes have an overall advantage in the total ratio of coaches to athletes.

#### *Assignment of Coaches*

The following information concerning coaches' training, experience, and other professional qualifications and standing was obtained from interviews with head coaches, assistant coaches, athletic program administrative officials, and documentation and information provided by the recipient. Both the University and the head coaches also provided information about their assistant coaches. Coaches are identified in the Coaching Staff Credentials Charts by each team they coach, including education and coaching experience for 2009-2010 and 2010-2011.

Interviews with athletic staff officials and coaches reveals that coaches are selected based on experience needed for specific coaching duties. The recipient reported that the AD determines the number of coaches assigned to each team utilizing the NCAA guidelines, and the University's EEO (Equal Employment Opportunity) policies, affirmative action goals, and gender equity and diversity regarding providing equal employment opportunities. The evidence reveals that search committees are formed for selection of head coaches and head coaches hire their own assistant coaches, with administration approval using the University's hiring process. Candidates are screened and interviewed, with the most qualified coach chosen. The selection of coaches is approved by the AD, University President, and Board of Regents.

The University reported that all coaches are full time employees of SELU, with the exception of one part time men's basketball coach. For the 2009-2010 school year, the men's teams had a total of seventeen (17) coaching positions with coaching experience ranging from 3 to 22 years, with an average of 9.06 years coaching experience per position. Comparably, the women's teams had eleven (11) coaching positions with experience ranging from 1 to 18 years, an average of 8.36 years coaching experience per position. The evidence reveals that for total coaching positions, there is a negligible difference of .70 years experience, slightly favoring the men's sports.

For the 2010-2011 school year, the recipient reported two coaching staff replacements for the women's athletic program. SELU reported the hiring of a new head women's volleyball coach and new assistant women's softball coach. These two coaching changes slightly increased the women's average of overall coaching experience to 9.45 years, with a negligible difference of .40 years experience when compared to the men's coaches' overall experience (9.05), slightly favoring the women's sports.

Based on the analysis of the evidence, OCR determined the differences of .70 years in favor of the men's program for 2009-2010 and .40 years in favor of the women's program for 2010-2011 do not indicate an inequality in effect for either the men's or women's athletic programs because OCR found no evidence that SELU routinely assigned coaches of less experience or qualifications to any particular sports program over another. In addition, interviews with coaching staff and student athletes did not reveal any reported concerns regarding the qualifications of the coaching staff assigned to respective teams. Further, the evidence shows that the women and men programs have comparable qualifications, education, and experience for their respective coaches.

### *Compensation of Coaches*

In determining compliance for compensation of coaches, OCR examines the allocation of funds for coaching to the men and women's program. Specifically, OCR examines the rate of compensation, duration of contracts, conditions relating to contract renewal, experience, nature of coaching duties performed, working conditions, and other terms and conditions of employment.

The University and staff officials reported to OCR that coaches are selected based on experience needed for specific coaching duties. OCR's investigation reveals that there are no written policies or procedures for determining coaching salaries, however, the AD determines the budget for coaches' salaries and considers "market rate", individual performance, seniority, competencies, work experience, education, and workload and duties in the selection process. The recipient also reported that the administration also considers the College and University Professional Association for Human Resources (CUPA-HR) Survey results in determining coach's salaries, which is national statistical data on higher education salary data.

For the 2009-2010 school year, the evidence reveals that the total compensation paid to head coaches in the men's program was \$343,062 and the women's program total was \$274,230, for a difference of \$99,880 in compensation favoring the men's program. The evidence further reveals that the assistant coaches' compensations compared \$484,342 to \$178,708, favoring the men's over the women's program as well by a difference of \$305,634.

OCR determined the total funds expended for SELU 2009-2010 coaching salaries and then compared the percentage of funds used for coaching of women and for coaching men. OCR found SELU spent approximately \$1,280,342 total compensation to its coaching staff in 2009-2010. Of that, approximately \$827,404 (64.62%) was received for coaching men and \$452,938 (35.38%) was received for coaching women. OCR then considered the percentage of SELU athletes (228 total) by sex, and found that for 2009-2010, 149 male athletes made up 65.35% of

athletes at SELU, while 79 female athletes made up 34.65% of athletes at SELU. OCR found the proportion of the percentages to be equivalent to the proportion of male to female participants in the athletics program, with a slight advantage to coaches of female sports.

For the 2010-2011 school year, the University reported salary increases in the women's program only for head coaching staff, most significantly for women's basketball and volleyball head coaches. The evidence reveals that the total compensation paid to head coaches in the men's program remains the same at \$343,062, while the women's program total increased to \$284,984, with a difference of \$58,078 in compensation favoring the men's program. The evidence further reveals that compensation for women's assistant coaches decreased to \$178,388 compared to the men's program of \$484,342, favoring the men's over the women's program as well with a difference of \$305,954.

OCR determined the total funds expended for SELU 2010-2011 coaching salaries was approximately \$1,290,776. The investigation similarly revealed that of the total coaching compensation for women and men sports, \$827,404 (64.10%) was received for coaching men. However, the evidence further reveals that the women's compensation increased to \$463,372 (35.90%) was received for coaching women. For 2010-2011, the evidence further reveals that there were 232 SELU athletes, with a slight decrease in male athletes (147), making up 63.36% of athletes at SELU, and a slight increase of female athletes (85), making up 36.64% of athletes at SELU as compared to the 2009-2011 school year. OCR found similarly, as with the 2009-2010 school year, that the percentages are equivalent to the proportion of male to female participants in the athletics program, with a slight advantage to coaches of female sports.

Based on the analysis of the compensation factor, OCR determined that football is the most significant difference impacting compensation favoring the men's program. The SELU football team has a large team (2009-2010: 86 student athletes; 2010-2011: 89 student athletes), which requires a large coaching staff, and consists of a total of nine coaches, with one head coach, and eight assistant coaches. As such, the salary of the head coach is significantly higher as reflective of the number of assistant coaches he supervises, as well as the salaries for each of the assistant coaches on his staff. Based on this information, OCR determined that this difference is a result of nondiscriminatory factors regarding the nature of the sport of football.

OCR's analysis further determined compensation differences of coaching staff with respect to comparable sports (*i.e.*, men's and women's basketball, men's baseball and women's softball). OCR's investigation identified a difference in coaching salary between the men's and women's head basketball coaches for 2009-2010, with the men's coach receiving XXXXX, and the women's coach receiving XXXXX, resulting in a difference of XXXXX, favoring men's basketball. However, OCR's investigation revealed a salary increase for the women's basketball coach in 2010-2011, reducing the compensation difference favoring the men's basketball coach to \$13,353. OCR also identified a difference in compensation between men's baseball and women's softball for 2009-2010 and 2010-2011, wherein the baseball coach received XXXXX, compared to the softball coach who received XXXXX, resulting in a difference of XXXXX, favoring men's baseball.

OCR's analysis of nondiscriminatory factors for these differences in compensation for comparable sports reveals both basketball coaches have similar participant numbers on their respective teams, levels of competition, records of achievement, and educational levels and coaching experience. However, one nondiscriminatory factor of consideration impacting compensation differences is the comparison of basketball coaching staff. The evidence reveals that the men's basketball head coach supervises three (3) assistant coaches, as compared to the women's basketball coach, who has only two (2) assistant coaches under her supervision. With regard to the men's baseball and women's softball head coach salary difference favoring men's baseball, the analysis reveals differences wherein the baseball coach has a higher level of education and an increase of participants when compared to women's softball, providing nondiscriminatory factors for the difference in salary. Additionally, a coach's record of achievement can be a justifiable reason for difference of salary. According to the University, the baseball program has had a winning record since the head coach took over the program in 2005, and the team was nationally ranked at the Division I level for the first time in SELU's history in 2009-10.

Similarly, OCR also found differences in comparing assistant coaching salaries for comparable sports. When comparing the two men's full time assistant basketball coaches salaries at XXXXX and XXXXX, equaling XXXXX, and the women's two full time assistant coaches at XXXXX each, totaling XXXXX, reveals a difference favoring women's basketball by \$4,808. Alternatively, men's two assistant baseball coaches were paid XXXXX and XXXXX, totaling XXXXX and the two women's softball assistant coaches were paid XXXXX and XXXXX, equaling XXXXX, with a difference of \$12,600 in favor of the men's assistant baseball coaches. OCR considered these differences and whether there were nondiscriminatory factors to justify these differences. The evidence shows that when comparing the men's baseball and women's softball assistant coaches, there are differences in level of education and work experience which provide nondiscriminatory factors to justify salary differences between the assistant coaches.

OCR determined that with respect to availability of coaches, both the 2009-2010 and 2010-2011 coaching ratios of coaching staff-to-participants favor the women's program. However, OCR determined that the coaching ratio difference favoring the women's teams is offset by the FTE of coaching, which favors the men's program. OCR's investigation reveals that the difference was a reflection of the total number of athletes for both school years (2009-2010: 79 female athletes/149 male athletes; 2010-2011: 85 female athletes/147 male athletes). In addition, the evidence reveals that the female athletes have an overall advantage in the total ratio of coaches to athletes, 1:7 (women) compared to 1:8 (men). Concerning assignment of coaches, OCR found that overall, the women and men programs have comparable qualifications, education, and experience for their respective coaches.

OCR determined that compensation for coaches favors the men's program when compared to the women's program in total compensation allocated for the 2009-2010 and 2010-2011 school year. However, further analysis reveals that the proportion of the percentages of compensation to be relatively equivalent to the proportion of male to female participants in the athletics program. The differences in compensation between the programs are attributed to football, which has a significantly larger team, requiring a greater coaching staff, and in turn, additional salaries and compensation. In addition, differences in compensation for comparable sports also revealed

nondiscriminatory factors that would impact compensation differences favoring either men's or women's sports, including levels of education, work experience, assistant coaching supervision duties, and a winning record. As such, OCR determined that while there are differences in compensation between the men's and women's programs, which typically are in favor of the men's program, these differences can be attributed to identified nondiscriminatory factors.

To summarize, OCR determined the availability, assignment and compensation of coaches for the women's athletic program was equivalent to that provided to the men's athletic program. Although there are differences with regard to the factors examined, most notably differences in compensation, the evidence did not reveal that these differences were sufficient to constitute a disparity. In analyzing all the factors of the coaching component, the primary focus of the analysis is the availability of coaches. Based on the analysis of the evidence, OCR determined that the availability and qualifications/ assignment of coaching staff for the men's and women's program is equivalent in effect, with negligible differences that do not result in a disparity. With regard to the compensation of coaches, OCR determined differences in salaries favoring the men's program; however, OCR also identified nondiscriminatory factors to justify the differences. Based on the analysis of the compensation factor, OCR is unable to conclude that the evidence supports that the differences in compensation favoring the men's program has negatively impacted the women's program, given that OCR was able to establish that availability and assignment of coaching are equivalent. Therefore, OCR's investigation found that overall, equivalent benefits, treatment and services are being provided to SELU male and female athletes in the opportunity to receive coaching and the assignment and compensation of coaches. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the opportunity to receive coaching assignment and compensation of coaches.

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

In determining compliance in the provision of medical and training facilities and services, OCR considers the following five factors: availability of medical personnel and assistance; health, accident and injury insurance coverage for athletic participants; weight and conditioning facilities; availability and qualifications of athletic trainers; and quality and availability of training facilities.

##### *Availability of Medical Personnel and Assistance*

According to their policy, SELU requires all student athletes to complete a pre-participation physical examination prior to the student-athlete being issued equipment, being permitted to attend any practice or strength and conditioning session, and/or competing in any intercollegiate athletic activities. During interviews with coaches and student-athletes, it was confirmed that athletes, male and female, are usually scheduled for these physical examinations during the fall semester of each school year at the North Oaks Medical Complex near the campus.

During interviews, OCR also found that physicians from the North Oaks facility were made available to the student-athletes upon sports-related injuries. This was usually done on a scheduled basis, although athletic trainers could arrange emergency-related treatment if

necessary. This was for all athletic programs, male and female, and also was applicable to home and away events.

However, OCR noted one difference regarding the availability of medical personnel. Although athletic trainers are made available to all teams, discussed below, one or more physicians are present for home football games; and at least one physician travels with the football team for away events. Because of the uniqueness of the sport, and high probability of injury regarding this contact sport, OCR has determined that this is a permissible difference.

#### *Health, Accident and Injury Insurance Coverage*

Regarding health, accident and injury insurance coverage; the SELU provides a medical and catastrophic insurance program for its student-athletes. This was confirmed by coaches and athletes during interviews. The insurance coverage covers injuries/illnesses/accidents resulting from the direct participation in the intercollegiate athletic program during the dates of the primary competitive season and designated off-seasons, as approved by the Athletic Director and in accordance with NCAA regulations. There are no differences regarding the type of sports played, nor any based on the sex of the athletes.

#### *Availability and Quality of Weight and Conditioning Facilities*

At SELU, both male and female athletes, have access to the Naquin Strength and Conditioning Center, the University Center, and the Pennington Student Activity Center. They are available on both a scheduled basis, as well as on a drop-in basis, if not in scheduled use at the time. The Pennington Activity Center is available to all students, as well as athletes.

Equipment at the Naquin Center includes free weight/squat racks, stability balls and jump ropes. The quality of the facility is excellent; and it is primarily utilized during scheduled times for various teams depending on the time of the year, the team's practice and competitive schedule and whether the particular sport is in season. At the University Center, there are several free standing bench/squat adjustable racks, free standing bench racks with pull up bars, a leg press machine, a leg curl machine and adjustable benches. Because of its location, it is primarily utilized by the men's and women's basketball teams, and by the women's volleyball, women's soccer and softball teams. Based on interviews with the athletes, and physical observation during OCR's onsite visit, the quality of the facility is good. The Pennington Center, which has numerous treadmills, free weight machines, elliptical machines, and basketball courts, is a relatively new facility, in excellent condition; and, as detailed above, is utilized by all students, male and female. Although the Naquin and University Centers are primarily made available during scheduled times for the teams as a whole, and there were differences in the scheduled times, OCR's review of information indicated that times were convenient for all teams, male and female, and were largely accommodating to the team's practice and competitive times, and based on whether the team was in season.

### *Availability and Qualifications of Athletic Trainers*

Numerous athletic trainers are made available to the student athletes at a central facility, the Dugas Center. In this facility, there is also housed the North Oaks Sports Medicine Clinic, which is part of the North Oaks Medical System referenced above. Student-athletes can seek treatment with an athletic trainer on both a scheduled and drop-in basis.

At SELU, certain trainers are assigned different sports. For example, the Assistant Athletic Director for Sports Medicine (AADSM) works with the athletes for football and baseball. One Assistant Athletic Trainer is assigned to the women's basketball team, and also works as an assistant to the AADSM for football. One other Assistant Athletic Trainer is assigned to men's basketball, and to women's volleyball; and another to women's soccer and to softball. The AADSM and Assistant Athletic Trainers have comparable educational backgrounds and certifications (*i.e.*, ATC-certified trainers, and LAT- licensed trainers).

Additionally, student trainers, Graduate Assistant Athletic Trainers are assigned to the other sports, such as men's golf, men's and women's track and field and men's and women's cross-country, women's tennis; and baseball. These students are completing their post-graduate work in the athletic trainer academic degree program at SELU, and as such, do not have the experience or credentials as the trainers listed above. Nevertheless, other than for baseball, they are all certified athletic trainers (*e.g.*, ATC certified).

Interviews with coaches and student-athletes confirmed that the trainers were available to all of the programs for both practice and competitive events, except for practice sessions for the women's tennis and men's golf teams because they currently hold practices several miles from campus. New tennis courts were being built at the time of OCR's initial onsite; they are now complete which has addressed this issue for the women's tennis team. For the men's golf team, the SELU does not anticipate sudden and severe injuries that would require immediate attention by an athletic trainer at the golf course.

### *Availability and Quality of Training Facilities*

As SELU, the Dugas Center provides training facilities for all of the student-athletes. A physical inspection confirmed that the facility is in excellent condition. There are numerous treatment beds, tubs, raised platforms, medicine balls, treadmills, steppers, and other equipment, such as medical supplies and exercise machines, common to training facilities. It is open to all athletes, male and female, during regular work hours, and on weekdays and weekends. The Dugas Center is in close proximity to the football stadium.

Additionally, there are two additional smaller training facilities in close proximity to the practice/competitive sites of other sports programs. One, in adequate to good condition, is located at the University Center and is primarily utilized by the men's and women's basketball teams, and women's volleyball team, because that is where they practice and compete. As with the Dugas athletic training facility, there are treatment beds, medical supplies common to the treatment of sports-related injuries, and a hot water tub. The other, located at the "North Gym", also has several treatment beds, appropriate supplies, and a treatment tub. The North Gym

training facility is in close proximity, and primarily used by the women’s soccer and softball teams. The athletic trainer attending to these sports has their “office” at this site, as at the University Center facility.

Although certain training facilities are primarily utilized by certain teams that typically practice and compete in close proximity to these sites, all training areas are available to all athletes, especially the Dugas facility, should the two smaller facilities not suffice. As detailed above, the Dugas training site, which is the largest and has a better overall quality is closest to the football stadium, and as detailed above, the football team has the most athletes. However, OCR observed an equal number male and female athletes receiving treatment at this facility during the two week-long onsite visits. Additionally, although football players frequently are subjected to more injuries because of the unique nature of the contact sport, during interviews with the coaches and players, there was no indication that the location of any of the facilities was an issue. In general, teams have priority use of the training sites during their competitive seasons.

To summarize, in addressing the five factors detailed above, OCR noted minor differences. However, any such differences did not necessarily favor one sex or the other, and/or were attributable to nondiscriminatory reasons (*e.g.*, the unique nature of contact sports, frequency of injuries, and number of participants). Therefore, OCR determined that the provision of medical and training facilities and services was equivalent or equivalent in effect, such that there was no denial of equal athletic opportunity regarding this component. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the opportunity to receive medical and training facilities and services.

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

In assessing compliance in this area, OCR considers the equivalence for men and women of the housing and dining facilities and services or other related special services provided for student athletes. OCR examined SELU’s information and publications pertaining to Housing and Dining for the 2009-2010 and 2010-2011 academic year. In addition, OCR conducted interviews with SELU coaches and student athletes with regard to housing and dining facilities and services.

##### *Housing*

OCR’s review of information and interviews with coaches and male and female athletes revealed that SELU provides no special housing for athletes. SELU has twelve on-campus residence facilities, ten (10) residence halls, on-campus apartments, and a residence hall specifically oriented for members of sororities or fraternities. The residence halls, with one exception, offer semi-private rooms with a shared bath. The exception, which is Zachary Taylor Hall, has semi-private rooms.<sup>10</sup>

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<sup>10</sup> SELU has two residence halls named Taylor Hall; the oldest of the residence halls, Zachary Taylor Hall, was built in 1962 and updated in 2007. The “new” Taylor Hall was built in 2005.

Male and female athletes are given the option to reside on-campus or to live off-campus. Male and female athletes are assigned to housing based on their application date determined to be when all required documents have been submitted. The Athletic Department coordinates the processing for housing for the athlete with the Housing Department, and in some cases, recommends room assignments. Scholarships that include housing provide the athlete with a stipend, currently \$2070, for a 2-person room with shared bath. An athlete may pay the difference for a private suite.

Housing facilities are open pre-season or during school breaks for athletes required to be on-campus prior to the beginning of classes or during periods when students are generally not on campus, *i.e.*, fall and spring breaks, Thanksgiving, Christmas, Mardi Gras and Easter. Teams that require housing either pre-season or during school breaks include men's football, men's basketball, men's baseball, women's basketball, women's softball and the combined track/cross country team.

Male and female athletes receive equivalent special services as part of housing arrangements, the same as those provided the general student body such as access to laundry facilities and parking.

### *Dining*

SELU contracts dining services to the Aramark Corporation (Aramark). There are no special dining facilities or services for athletes. OCR's investigation revealed that all male and female athletes on scholarship are provided funds to enable them to purchase a meal plan equal to the meal plan provided to the general student body. Specifically, athletes on scholarship receive a stipend to purchase a 19-meal plan (Lion Plan) currently at \$1225 per semester. All students, including athletes, are provided their choice of four meal plan options that currently range in price from \$1085 to \$1225 per semester.

During pre-season or during school breaks, male and female athletes remaining on-campus are provided housing and meals. SELU's contract with Aramark contains provisions to provide meals during pre-season for football, men's basketball, women's basketball and women's volleyball, or anytime a team is required to be on-campus when the University is closed.

OCR found that four sports teams were provided with pre-game meals during the 2010-2011 academic year: men's football, men's basketball, women's basketball and men's baseball. According to SELU, pre-game meals for teams with daytime competitions or varying schedules are left to the coaches' discretion as a pre-game meal may interfere with classes or typical eating patterns. With regard to the 2009-2010 academic year, the men's football, men's basketball and women's basketball teams were the only teams that had pre-game meals.

For home games, football athletes are provided a pre-game meal in a private setting at the Twelve Oaks Room located in the Cayman Café, which is SELU's campus cafeteria. Athletes sign a voucher form for the pre-game meal and Aramark deducts a meal from the athlete's meal card. The men's football budget is billed for meals served to the very few off-campus athletes who do not have a meal plan. For athletes on meal plans, the Athletic Director stated that the pre-game meal for football is not an additional meal that athletes receive, but rather is substituted

for one of the meals already included in the athlete's meal plan (*e.g.*, the pre-game meal will replace breakfast, lunch, or dinner for that day, depending on the time it is served).

During the 2009-10 and 2010-11 seasons, for home games, the men's and women's basketball teams traditionally were provided a pre-game meal at a local restaurant of similar quality, which was billed to the team's budgets, *i.e.*, the meals are not deducted from their meal plans. The men's baseball team, with the 2010-2011 season had a pre-game meal on the Friday morning of each home series (there were five home series). The meals were billed to the team's budget. The pre-game meals are held at the Cayman Café. Men's baseball did not have pre-game meals during the 2009-2010 season.

OCR interviewed the coaches and athletes of male and female teams who do not have pre-game meals. The coaches interviewed offered various reasons for not having a pre-game meal including the following: 1) Athletes have not expressed interest in a pre-game meal; 2) limited funding; 3) a pre-game meal for daytime scheduled events would likely interfere with athletes attendance at classes; 4) athletes living off-campus would have to arrive earlier for events; 5) the time of day when a pre-game meal would need to be held (3 to 4 hours before a competition) for daytime events might not fall within the time of day when athletes would normally eat meals; and, 6) many athletes have scholarships or academic funds that provide for meals.

OCR found that three sports teams were provided with post-game meals: men's football, men's basketball, and women's basketball. After the home football games, athletes gathered at a pizza parlor or other similar eating establishment for post-game food paid from the team's budget. There were five home football games during each of the 2009-10 and 2010-11 seasons. Similarly, both the men's and women's basketball teams gathered for post-game food paid from the team's budget at a pizza parlor or informal eating establishment during the same academic years. Additionally, two sports, baseball and softball, participated in occasional post-game cookouts hosted by athletes' parents. Some baseball players and their parents took part in cookouts on tournament weekends during the 2009-2010 and 2010-2011 seasons. Some softball players and their parents took part in cookouts on some Sundays during the 2010-2011 season.

To summarize, SELU provides no special housing or dining facilities and services to student athletes. Additionally, OCR found no evidence that during the 2009-2010 or 2010-2011 academic years, the availability or quality of housing or dining services was different for men and women athletes.

However, OCR determined that the pre-game and post-game meals provided by the University to men's and women's teams favored men's teams. Men's and women's basketball teams received regular pre-game meals that were in addition to an athlete's scheduled meal plan. The men's baseball team was provided with pre-game meals prior to each of its five home series during the 2010-11 academic year paid for by the team's budget. The football team was provided with pre-game meals as part of their regular meal plans (for those without meal plans, the meals were paid by the team budget). Football athletes as well as male and female basketball athletes were also provided post-game food (pizza parties) for every home game from the team's budget, during the 2009-10 and 2010-11 academic years. In addition, baseball athletes attended occasional after-

game parent-sponsored cookouts during the 2009-2010 and 2010-11 academic year and softball athletes attended occasional after-game parent sponsored cookouts during the 2010-2011 season.

OCR determined that only providing men's baseball, men's basketball, women's basketball and some football players with pre-game meals paid by the team's budget and only providing football, men's basketball and women's basketball players with post-game food paid by the team's budget are differences in favor of men. However, the University provided information to OCR that, as of the 2013-2014 school year, two men's teams, football and basketball, are receiving pregame meals and three women's teams are receiving pregame meals, softball, tennis, and basketball. Additionally, three men's teams are receiving postgame meals, football, baseball, and basketball and two female teams are receiving postgame meals, softball and basketball. OCR considered these differences and information about pre-game meals obtained through interviews of coaches and athletes in light of the one men's team (golf) and two women's only teams (soccer and volleyball) that are not receiving either pre or post game meals. OCR concluded that the differences do not appear to be significant enough to negatively affect students of one sex and result in a disparity. However, OCR is requesting that University provide additional information concerning the pre- and post-game meals provided to its athletes as part of its monitoring.

#### **9. Publicity - 34 C.F.R. § 106.41(c)(10)**

In assessing compliance regarding the provision of publicity, OCR considers the availability and quality of sports information personnel, the services they provide, other publicity resources, and the quality and quantity of publications and other promotional devices featuring men's and women's programs.

According to SELU Policy, publicity is coordinated by the Southeastern Louisiana University Office of Sports Information, which is largely comprised of two individuals, the Assistant Athletic Director for Media Relations (AAD) and an Associate Director for Media Relations (AD). The AAD has primary authority regarding publicity for the Athletic Department. The Sports Information Office serves as the media liaison for the Department of Intercollegiate Athletics and sends information to media outlets in Hammond, and to the nearby metropolitan areas such as New Orleans and Baton Rouge.

With the aid of student workers, and one part-time employee, the AAD and AD gather and disseminate all information regarding the sports programs at SELU. Regarding availability, either the AAD or the AD makes himself available to all of the sports programs, and every athletic program has one of the two individuals largely responsible for its media coverage. For example, the AAD provides the publicity for football, men's basketball, baseball, and men's golf. He also provides coverage for men's and women's track and field. The AD is largely responsible for women's basketball, softball, women's tennis, women's soccer, and men's and women's cross-country. Additionally, both share women's volleyball.

The AAD or AD will attend all home and away games for their respective sports, except for the men's golf team and women's tennis team, in which neither the AAD nor the AD currently attend away events. However, for all other sports, if necessary, one will substitute for the other in cases where their assigned sports have time or location conflicts. For example, the AD will

attend home women's volleyball games when the AAD attends away football games on the same date. During interviews with student athletes and coaches, this information was confirmed, even though, at times, some athletes did not know of the particular individuals providing coverage for their sport. Additionally, during interviews with the athletes and coaches, although some concerns were raised regarding the amount of publicity provided for their respective teams, these concerns were not based on the AAD or AD's particular qualifications, which OCR determined to be comparable (*i.e.*, education, background, and experience). Likewise, the amount spent by the two individuals providing coverage of their respective sports was comparable, especially when the sports were in season.

As part of their assignments, the sports information personnel draft press releases for all of the sports programs, men's and women's. These press releases, which usually include scores and highlights are issued after each game/event (*i.e.*, recaps); and are also disseminated at the beginning of each season for each sport, when announcements are made regarding which players are participating along with a schedule of games/events. OCR found that they do this for all the sports programs, men's and women's; and of comparable quality. The press releases are also posted on the school's website and disseminated to media outlets in the area. The SELU sports information personnel also prepare pre-game advances and features of particular athletes. According to the AAD, they will also assist in making coaches and players available for any other media outlets, and also prepare statistics for posting on the website and for dissemination to media outlets.

Regarding the school's website, OCR's review (at various times during the current school year), indicated that both men's and women's sports programs received comparable coverage. The SELU has a specific website link to athletics, where anyone can then view updates, news and features for any particular sport. As detailed above, both the AAD and AD are responsible for the postings, and both are assigned to various men's and women's sports.

Other publicity resources for the SELU athletics programs include television, radio, and internet. Specifically, radio coverage of sporting events is provided by a campus radio station, and by an affiliate radio station in New Orleans. Television coverage is provided by SELU's noncommercial station, "Southeastern Channel"; and by the Southland Conference TV Network. The SELU station does not broadcast live events, but will air copies four to five days later based on an agreement with the Southland Conference. The SELU station typically broadcasts men's football games, and men's and women's basketball games. Some women's soccer and women's volleyball games are broadcast, as well as championships for women's soccer, softball and women's volleyball, and baseball. Tournament championships for these sports are also typically broadcast. The Southland Conference has a television station in Hammond, Louisiana, and will typically broadcast at least one football game from each school in the conference. Despite differences in television and radio coverage, OCR did not find that they were attributable to the gender of the sports team (*i.e.*, both men's and women's programs did not have complete radio and television coverage). Additionally, some differences were attributable to marketability, success of the program, airing of other competing academic and cultural events, and capabilities (certain number of individuals required for broadcasts, location, and contractual arrangements with local cable providers).

At the time of OCR's initial review of data there were also differences regarding internet coverage of sporting events. At that point, "live streaming" was in its early stages at the SELU, so only certain sports have had their games broadcast on the school's website, including football, men's and women's basketball and one game each for women's soccer and women's volleyball. These differences, however, have been corrected and "live streaming" process is now in use for all sports.

OCR reviewed information provided by the SELU and found that publicity was also provided by the sports information personnel for men's and women's teams in a variety of other manners, including press/media guides, game schedules and programs, and posters. For men's and women's programs, they were of comparable quality and quantity. For example, media guides for all sports contained similar information, such as pictures of the players, individual and team statistics, feature articles, and corresponding schedules. They largely had exteriors with color covers/pictures, and black and white material inside. Certain sports with fewer participants, like women's tennis and men's golf were provided smaller media guides and no game programs, unlike "major sports" like football and men's and women's basketball. Also, certain smaller sports (based on participation and media interest) were grouped according to the time of the year for competition (*e.g.*, "spring sports"), and shared posters or pocket schedules. This was true for both men's and women's teams; and as such, OCR found no substantial differences between the men's and women's teams with regard to printed publications.

The SELU sports information office also provided news and updates regarding the sports programs via social websites, such as Facebook and Twitter. At various times, OCR's review of these sites indicated that there were no preferences regarding men's and women's programs. Additionally, the AAD informed OCR that once a press release was written for a particular event, it would be forwarded to all media outlets, and simultaneously posted on the school's website and social media sites.

During interviews with student athletes, some stated that they were disappointed regarding the amount of publicity provided their respective teams. However, this was expressed by both male and female athletes; and no athlete or coach attributed any lack of publicity to the sex of the athletes. Some athletes even noted that the SELU was more concerned with academics (over sports), and as such, attributed low community engagement (and corresponding low spectator turnout) to such rationale. Nevertheless, OCR also noted that billboard advertisements had been placed by the SELU in the local community of Hammond, which featured male and female sports. Additionally, promotional pictures of athletes from all sports, and their current schedules were placed at high-volume areas, such as the football stadium.

Interviews with student athletes and coaches also disclosed other promotional devices utilized by the SELU, which included community engagement events by some of the sports teams, and signage regarding games posted at various places around campus. Additionally, fundraisers by the student athletes occur at different times throughout the school year, some in conjunction with all of the other sports, and some done individually by a specific team. At times, these events are supported by the sports information personnel and/or by the part-time worker recently employed exclusively for marketing and promotional events. However, there were no measureable differences attributable to the gender of any particular sports program.

To summarize, there were no differences regarding the quality of publications or other promotional devices. OCR found minor differences regarding the availability of the sports information personnel and the services provided by them, as well as concerning other publicity resources; but they were negligible and attributable to legitimate nondiscriminatory reasons. As such, the benefits provided regarding publicity were equivalent or equivalent in effect for the men's and women's programs and did not result in any denial of equal athletic opportunity. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the opportunity to receive publicity.

#### **10. Provision of Support Services - 34 C.F.R. § 106.41(c)**

In assessing compliance in this area, OCR considers, among other factors, the equivalence for men and women teams regarding the amount of administrative, secretarial, and clerical assistance received, and the availability of office space, equipment and supplies, and other support services. SELU does not have a policy regarding administrative services; therefore, OCR reviewed official job descriptions for each administrative and clerical support position within the athletic department pertaining to support services for the 2009-2010 and 2010-2011 academic years. In addition, OCR conducted interviews with SELU coaches and student athletes to determine the extent of administrative support, equipment and supplies, and office space available to the men's and women's teams.

The athletic program is headed by the Athletic Director (AD), who reports to the President of the SELU and the SELU Athletic Committee. SELU identified primarily four full-time administrative staff and two student workers who serve as support staff for the Athletic Department.

Reporting directly to the AD is an Administrative Assistant IV who is responsible generally for secretarial support for the AD including scheduling appointments and meetings, preparing materials for the NCAA, Southland Conference and various organizations, compiling reports, distributing student-athletes' stipends and assisting coaches with administrative matters as necessary.

An Administrative Assistant II provides administrative and clerical support for three teams, men's and women's basketball teams and the women's volleyball team. This position acts as the liaison between the athletic programs and the general public, prepares correspondence for coaches from hand-written drafts, corresponds with various administrative and academic offices on campus and outside sources such as vendors, maintains all records and files for the basketball and volleyball programs, and maintains payroll records, budgets and travel expenses.

The Athletic Department employs a Business Manager who serves as a liaison between the Athletic Director and all the head coaches regarding budgetary matters and travel issues. This position also performs a full range of accounting functions for the Athletic Department and prepares budgetary reports and highly complex athletic financial reports submitted to the NCAA, the federal government, and the Southland Conference.

A fourth position, Administrative Coordinator IV, serves as timekeeper for all teams, provides backup support for the travel coordinator, and assists with ticket operations. Additional administrative support is provided by two part-time student assistants who work ten (10) hours per week, mainly in support of the football program. They also assist coaches of all teams as needed.

OCR examined the Administrative Assistant II position that provides full-time support for three teams: women's basketball, women's volleyball and the men's basketball. The SELU informed OCR that men's and women's basketball require considerable designated administrative support. In addition, the Administrative Assistant II provides administrative support for women's volleyball which is housed (volleyball court and coaches' offices) in the same facility as basketball. As such, two of the five women's teams have assigned clerical support whereas coaches of men's teams generally individually perform clerical matters in support of their teams, with football having the assistance of two part-time student workers. Although a difference exists in administrative support specifically assigned for women's teams, OCR determined this does not represent a disparity.

OCR's interviews with coaches revealed most performed their own clerical work necessary in support of their teams' activities. The time spent by coaches on clerical support services varies according to the time of the year and sport season. OCR found that with the exceptions previously noted, coaches performed the vast majority of clerical work for their team including correspondence associated with recruitment of athletes, various form letters, equipment requisitions, expense reports, and other necessary team reports.

Coaches for all teams are provided telephone services consisting of a landline, long distance access and a cell phone. Of the Athletic Department staff, three rejected cell phone service; two athletic trainers and the assistant soccer coach. All coaches are provided a computer (laptop, desktop or both) and share office equipment such as printers, copiers, scanners, fax machines, TV cameras and video editing equipment. Any differences with regard to the shared availability of office equipment did not represent a significant disparity, as all coaches indicated that they have equal access to necessary equipment.

OCR inspected and analyzed office space provided for coaches of men's and women's teams. OCR determined coaches of men's teams have average office space of 200 square feet. These 200 square feet includes two large meeting rooms used by two football coaches as their offices. The average office space for coaches of women's teams is 195 square feet with two coaches of women's teams (assistant softball and assistant soccer coaches) sharing a large office. The staff did not indicate that sharing the offices affected his or her ability to counsel or recruit student athletes. Also, during OCR's initial onsite, SELU was renovating the offices for both softball and soccer. The renovation is now complete and OCR has inspected the renovated offices. The coaches of the combined track and cross country team have average office space of 235 square feet. Although some differences in the size of office space provided for men's, women's and combined teams exist, there is no significant disparity in the office space provided for men's and women's teams.

To summarize, a difference in clerical support exists; specifically, two of the three teams with assigned full-time administrative support from the Administrative Assistant II are women's teams (basketball and volleyball). As to whether this difference constituted a disparity, OCR considered SELU's information that men's and women's basketball has a greater need for administrative support due to the higher number of competitive events, travel and coordination required by these programs and the women's volleyball team makes limited use of the Administrative Assistant. OCR also considered that coaches of all other men's and women's teams perform various clerical duties in support of their athletic team and that there are no meaningful differences in office equipment provided or office space. In addition, none of the coaches interviewed reported a concern that any difference in assigned administrative support impeded their coaching duties and responsibilities or recruiting activities. As such, OCR determined that the difference in administrative support for women's teams does not represent a disparity.

Based on the information analyzed, OCR determined that SELU has provided equivalent support services to men's and women's teams. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the provision of support services.

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

In assessing compliance in this area, OCR considers the following: 1) whether coaches or other professional athletic personnel in SELU's 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 SELU's men's and women's teams are equivalently adequate to meet the need of each program; and 3) whether the differences in benefits, opportunities, and treatment afforded to prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of athletes of either sex.

##### *Opportunities to Recruit*

According to information submitted via the data response and interviews with SELU personnel, OCR determined that all coaches (both head and assistant coaches) for each team (male and female) are involved with recruiting of athletes. All teams have at least one full-time assistant head coach, with the exception of the men's golf and women's tennis teams. With regard to those teams without full-time assistant coaches, the head coaches do all of the recruiting.

OCR determined that coaches of men's and women's sports received a comparable number of recruiting trips, with the exception of football, which had a significantly higher number of trips. As discussed above, SELU coaching staff reported that with the exception of women's soccer, women's tennis, and men's golf, students are typically recruited from the same regional area, (Texas, Louisiana, and other southern states). In addition to regional areas, SELU recruits from Canada for women's soccer and recruits internationally for the women's tennis and men's golf team members.

The coaches also reported during onsite interviews with OCR that in addition to travel, they use the same or similar recruiting methods, *i.e.*, telephone, facsimile, e-mail/Internet (viewing tapes,

etc.), and U.S. mail; although some methods may be used more than others depending on the region from which they heavily recruit. For example, those coaches who have more international players rely heavily on recruiting through the use of e-mail/Internet. The coaches for football, women's/men's track and field, women's basketball, and women's volleyball all indicated that they also utilize scouting services to help with recruitment of student athletes for their teams.

All of the coaches for both men's and women's sports indicated that recruiting is an integral part of their jobs and they reported anywhere from 15-80% of their time is spent on recruiting.<sup>11</sup> OCR found that while there may have been slight differences in the time spent by coaches on recruiting, there was no significant disparity such that would cause a negative impact on either the men's or women's teams. Additionally, none of the coaches interviewed asserted that they had a problem with the amount of time they were able to spend on recruiting duties.

### *Financial and Other Resources*

For the 2009-10 year, the data revealed that SELU's total athletic recruiting expenses were \$115,532 (including telephone and postage); \$88,725 without.<sup>12</sup> Of that total amount, 63.3% (\$73,132) went to men's sports and 36.7% (\$42,400) went to women's sports. For the 2010-11 year, the data revealed that SELU's total recruiting budget was \$132,313 (\$115,000 for travel only, without telephone and postage expenses). Of that total amount, 61.0% (\$80,718) went to men's sports and 39.0% (\$51,595) went to women's sports. OCR notes that the funds allocated to recruiting are almost in proportion to the male and female athletes currently participating in intercollegiate athletics at the University. If the University's goal is to provide additional participation opportunities for female athletes, recruiting expenses would be expected to increase as the University seeks to build the new teams into Division I caliber or increase the size of existing teams.

### *Benefits, Opportunities, and Treatment of Prospective Athletes*

According to SELU's policies regarding recruitment of student athletes, all recruiting must be done in accordance with the NCAA recruiting policies.<sup>13</sup> The coaches interviewed during an OCR onsite visit in January corroborated that recruiting is done in accordance with the NCAA rules.

SELU submitted a list of prospective student athletes, by sex, who had trips to campus subsidized by SELU. The list showed that from recruiting periods of January 2009 to June 2010, there were a total of 93 prospective athlete visits; 64 male official visits (68.8%) and 29 female official visits (31.2%). For the male visits, a total amount of \$16,652.50 was spent and for the female visits, a total of \$15,140.00 was spent.

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<sup>11</sup> Some of the assistant coaches that were interviewed have the primary duty of recruiting; therefore their reported time spent on recruiting was higher than some of the other coaches who were interviewed.

<sup>12</sup> The calculations were done including the line item fees for: mailing/postage, internet services, and telephone services, since all SELU sports (both female and male) utilize the Internet, U.S. mail, and/or telephone for recruiting purposes.

<sup>13</sup> There are differences in the recruiting policy for each sport, however, the differences are based on the type of sport and not are not based on and/or disparaging towards the sex of the student-athlete.

As previously mentioned, SELU coaching staff reported that with the exception of women's soccer, women's tennis, and men's golf, all students are typically recruited from the same regional areas (for example, the Southland conference areas of Texas and Louisiana, as well as other southern states). In addition to regional areas, women's soccer recruits heavily from Canada, and the women's tennis and men's golf team recruit internationally. International students typically do not visit the campus. The men's golf and women's tennis coaches, who have \$1500 and \$1000 respectively, for travel in their recruiting budgets stated that they usually do not use the funds, because they are insufficient to pay for one trip to the international locations they recruit from, or to bring players to the United States to visit SELU's campus.

OCR determined that the men's football team had significantly more recruits to visit the SELU campus and made more trips to visit prospective athletes than all other sports. OCR noted that the football team typically has about 90 players; significantly more than any other SELU athletic team. Additionally, while there were significantly more male visits than female visits, the difference in money spent on the men's visits and the women's visits was only a difference of \$1512.50. All of the interviewees also indicated that the visits were the same or similar in quality and OCR found no evidence of any exceptional services or treatments for any of the prospective student athletes.

To summarize, OCR determined that coaches serving both male and female sports are provided with substantially equal opportunities to recruit, financial and other resources available for recruitment in both men's and women's athletic programs are equivalently adequate to meet the specific needs of each program, and the benefits, opportunities, and treatment afforded to prospective student athletes of each sex do not have a disproportionately limiting effect upon the recruitment of either male or female athletes. Therefore, OCR finds no significant disparity in this area. Based on the foregoing, there is insufficient evidence to conclude that SELU failed to provide equal athletic opportunities to students of both sexes with respect to the recruitment of student athletes.

## **Conclusion**

Prior to OCR completing its investigation, SELU requested to resolve the review with a voluntary resolution agreement and submitted the attached resolution agreement (Agreement) on November 13, 2013. The Agreement requires the University to take steps to ensure that it is providing equal opportunities for male and female students in its intercollegiate athletics program. The agreement addresses three specific areas: the accommodation of the interests and abilities of students (including equal opportunities to participate and equivalent levels of competition), athletic financial assistance, and the provision of locker rooms, practice and competitive facilities.

In the area of interests and abilities, SELU has chosen to demonstrate compliance with the applicable Title IX regulation by demonstrating its compliance with Part 3 of the Three-Part Test. The Agreement required the University to conduct, and report the results to OCR, an objective assessment of the athletic interests and abilities of female students based on multiple indicators. The University has provided OCR with its assessment. OCR is reviewing the

University's report assessment to determine whether it complies with the requirements of the Agreement, including the requirements regarding the manner and scope of the assessment. If SELU has not demonstrated current compliance with the Three-Part Test, the Agreement requires the University to submit a detailed action plan by April 30, 2014 for OCR's review and approval as to the steps SELU will take to achieve future compliance in effectively accommodating the interests and abilities of female students in its athletics program over the next three academic years. Specifically, the plan must include the interim steps the University will take during the 2013-2014 and 2014-2015 academic years to increase athletic participation opportunities for female students, including adding new teams for female athletes, creating additional levels of competition and/or increasing the size of existing teams until SELU achieves compliance with Title IX in fully and effectively accommodating the interests and abilities of female students by the 2015-2016 academic year. The University must provide any new teams with sufficient funds to cover their expenses; the funding must be comparable to the funding provided to other intercollegiate teams.

With respect to athletic scholarships, the Agreement requires SELU to demonstrating to OCR by November 2014 either that substantially equal opportunities were provided in awarding athletic scholarships to male and female athletes during the 2014-2015 academic year or to submitting a detailed plan to ensure that, by the beginning of the 2015-2016 academic year, the University is in full compliance with its Title IX obligation to provide athletic scholarships in a nondiscriminatory manner. The Agreement requires SELU to identify all legitimate, nondiscriminatory factors that may explain the disparities in athletic scholarships awarded to male and female athletes. Such factors may include SELU's efforts to comply with Title IX participation requirements by, for example, phasing-in scholarships to build new teams for women quickly.

Finally, the Agreement required that by January 1, 2014, the University would ensure that the practice and competitive fields provided for the women's soccer team are comparable to the practice and competitive fields provided to men's teams. Specifically, the plan specifically required SELU to address the poor drainage of water from the field, remove the wooden berm located near the main entrance to the soccer field, and remove or otherwise provide material that can cover all drains located within 20 feet of the boundary of the soccer field during practices and competitive games/matches. In addition, SELU agreed not to use the alternative youth soccer association field for the practices or competitions for the women's soccer team.

In December of 2013, pursuant to the Agreement, SELU reported that it had removed the wooden berm described above, added gravity drainage swales in several locations around the soccer field and covered drains located within 20 feet of the playing surface with padding. SELU has also designated the field turf football stadium as the alternative field for the women's soccer team if the soccer field is unplayable due to rain and informed that there is sufficient room on the football stadium field to accommodate the playing field dimensions for the women's soccer team. The information provided in the University's recent report describes important improvements that have already been made to the women's soccer field, although it is not clear that these improvements fully address the drainage issues at the field. Moreover, the information provided by the University does not make clear how it will ensure that the football turf field will be available to the women's soccer team when needed if the football team continues to have

priority access to the field. OCR will address these concerns with the University as part of its monitoring of the University's commitment to provide comparable practice and competitive fields provided for the women's soccer teams.

By December 30, 2014, SELU also agreed that it will conduct a comprehensive assessment of all of its locker rooms, practice fields and facilities, competitive fields and facilities, assigned to the men's and women's athletic teams to ensure the equivalent provision of locker rooms and practice and competitive facilities. By January 30, 2015, SELU will provide OCR with a report of its assessments and description of any plans regarding the locker rooms and practice and competitive facilities. OCR will review the University's assessment and any accompanying plans in light of the University's obligations under the Agreement and 34 C.F.R. § 106.41(c)(7) to provide equal athletic opportunity for members of both sexes, including in the provision of locker rooms, practice and competitive facilities. OCR will inform the University of the adequacy of the assessment and any plans developed by to ensure that female and male student athletes are provided with substantially equivalent benefits and services in this area. SELU will report to OCR on the implementation of these plans each academic year during the monitoring of this Agreement.

As noted above, OCR is also requesting that the University provide additional information concerning the pre- and post-game meals provided to its intercollegiate athletes during the current 2013-14 academic year. Specifically, OCR requests that, by April 30, 2014, the University provide OCR with documentation concerning its current policies and procedures regarding the provision of pre and post game meals to athletes (not part of a student's regular meal plan) and documentation as to the payment of the expenses for those meals.

OCR will monitor SELU's implementation of the Agreement. If the University fails to implement the Agreement, we may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter is not intended, nor should it be construed, 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.

Thank you for the cooperation extended by you and your staff to resolve the compliance review. If you have any questions, please feel free to contact Paul Edward Coxe, Supervisory Attorney/Compliance Team Leader, at (214) 661-9600.

Sincerely,

Taylor D. August  
Director, Dallas Office

Enclosure