



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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October 18, 2016

XXXXX XXXXX, President  
Fort Scott Community College  
2108 South Horton  
Fort Scott, Kansas 66701

Re: Docket # 07052020

Dear President XXXXX:

On February 8, 2005, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Fort Scott Community College (College), Fort Scott, Kansas, alleging discrimination on the basis of sex. This is to inform you we have completed the investigation of the complaint.

Specifically, the complainant alleged the College discriminates on the basis of sex by failing to provide equitable athletic opportunities in the following areas: equipment and supplies, travel and per diem, opportunity to receive coaching and the compensation of coaches, locker rooms, and practice and competitive facilities, medical and training facilities and services, and publicity.

OCR's investigation examined whether the College provides male and female students an equal opportunity to participate in the College's intercollegiate athletic program by effectively accommodating their interests and abilities and providing opportunities for athletic financial assistance to members of both sexes in proportion to the participation rate of men and women in the intercollegiate athletics program. The investigation also examined whether the College provides equal athletic opportunities for male and female students with regard to the benefits and opportunities in all of the components of the College's intercollegiate athletics program.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving Federal financial assistance from the Department.

As a recipient of Federal financial assistance from the Department, the College is subject to Title IX. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Before OCR completed its investigation, the College expressed interest in resolving the following Title IX athletics components through a resolution agreement: athletic financial assistance; travel and per diem; the opportunity to receive coaching and the compensation of coaches; the provision of publicity; the provision of support services; and the recruitment of athletes. OCR determined that it was appropriate to resolve these components pursuant to OCR's *Case Processing Manual*<sup>1</sup> (CPM) Section 302.

OCR determined that the preponderance of the evidence did not support finding that the College failed to comply with the Title IX regulations for the following Title IX athletics components: equipment and supplies; scheduling of games and practice times; opportunity to receive academic tutoring and assignment and compensation of tutors; medical and training facilities and services; and housing and dining. OCR is closing these components pursuant to Section 303(a) of the CPM because there is insufficient evidence to support a conclusion of noncompliance.

OCR determined that the preponderance of the evidence supported a conclusion that the College failed to comply with the Title IX regulations for the following Title IX athletics components: the accommodation of athletic interests and abilities and locker rooms, and practice and competitive facilities. OCR is resolving these components pursuant to Section 303(b) of the CPM because there is sufficient evidence to support a conclusion of noncompliance.

Each Title IX athletics component is explained in detail below. On September 30, 2016, OCR entered into a Resolution Agreement (Agreement) with the College to resolve the Section 302 and Section 303(b) components noted above.

The College has agreed to provide data and other information during OCR's monitoring of the Agreement and OCR may conduct additional visits and request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.37(c) and § 106.41. OCR will not close the monitoring of the Agreement until it has determined that the College has complied with the terms of the Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. § 106.37(c) and § 106.41, which were at issue in this complaint. Should the College fail to fully implement the Agreement and to provide data to OCR in order for OCR to determine compliance with the Agreement, as well as the Title IX requirements relating to the above specified areas in which the College is found out of compliance, OCR will take appropriate action to ensure the College's compliance with Title IX.

## **Background**

The College, located in Fort Scott, Kansas, is a two year community college. As of academic year 2014-15, there were 1,346 full time undergraduate students enrolled at the College, 740 (55%) male students and 606 (45%) female students.

In academic year 2014-15, the College offered three intercollegiate men's sports (football,

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<sup>1</sup> The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

baseball, and basketball) and three intercollegiate women's sports (volleyball, softball, and basketball). The College is a member of the Kansas Jayhawk Community College Conference and a part of the National Junior College Athletic Association. Football and baseball compete at the Division I level and the other sports compete at the Division II level.<sup>2</sup>

OCR reviewed data provided by the College and conducted on-site visits to inspect the College's facilities, including athletic locker rooms, practice and competitive facilities, equipment and supplies, medical and training facilities and services, and support services. OCR also surveyed athletes, the athletic director, the athletic trainer, and coaches. The information provided below reflects the 2014-15 academic year.

During the course of this review, OCR reviewed the College's policies and procedures; student enrollment data, athletic participation data and financial aid data; practice and competitive schedules; and publications such as media guides, game programs, posters and pocket schedules.

During onsite visits, OCR staff visually inspected practice and competitive facilities and locker rooms, coaches' offices, College-provided athletic equipment and supplies, and equipment storage areas. OCR staff obtained information from the College's athletic director, athletic trainer, and the athletic administrative assistant, as well as all head coaches and some assistant coaches through interviews or surveys. OCR also solicited information from male and female athletes from each team regarding their experiences in the College's intercollegiate athletics program through surveys.

### **Legal Standards**

The regulation implementing Title IX, at 34 C.F.R. § 106.41(a), specifically prohibits discrimination on the basis of sex in athletic programs offered by recipients of financial assistance from the Department. The regulation implementing Title IX, at 34 C.F.R. §106.41(c), states that a recipient that operates or sponsors athletic teams must provide equal opportunity for members of both sexes.

OCR examined whether the College provides 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 regulation implementing Title IX, at 34 C.F.R. § 106.41(c)(1). The regulation states that in determining whether equal athletic opportunities are provided for males and females, OCR considers whether the selection of sports and levels of

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<sup>2</sup> The College has rodeo for male and female students who participate in events sponsored by the National Intercollegiate Rodeo Association. The College did not assert that rodeo was part of its intercollegiate athletic program. The College reported that rodeo is part of the Agriculture Department and is similar to other activities in that department such as livestock judging, meats judging, and horse judging. The Kansas Jayhawk Community College Conference and the National Junior College Athletic Association do not consider rodeo to be an athletic sport. Rodeo has its own association; its competition area is not the same as the Kansas Jayhawk Community College Conference, the athletic conference the College's athletic team compete in. Students who participate in rodeo provide their own horse, horse trailer, and truck to pull the horse trailer. The only money the College provides rodeo is six \$100 prizes for the top six rodeo participants. Based on this information, OCR did not include or consider rodeo to be within the scope of this investigation.

competition effectively accommodate the interests and abilities of members of both sexes.

OCR also examined whether the College provides its athletes opportunities for financial assistance in proportion to the number of students of each sex participating in intercollegiate athletics. The provision of athletic scholarships or grants-in-aid is addressed in the regulation implementing Title IX, 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 regulation implementing Title IX also requires the College to provide equal athletic opportunities for members of both sexes in the provision of equipment and supplies (34 C.F.R. §106.41(c)(2)); travel and per diem allowance (34 C.F.R. § 106.41(c)(4)); scheduling of games and practice times (34 C.F.R. §106.41(c)(3)); opportunity to receive academic tutoring and assignment and compensation of tutors (34 C.F.R. § 106.41(c)(5) & (6)); opportunity to receive coaching and assignment and compensation of coaches (34 C.F.R. § 106.41(c)(5) & (6)); provision of locker rooms, practice and competitive facilities (34 C.F.R. §106.41(c)(7)); provision of medical and training facilities and services (34 C.F.R. § 106.41(c)(8)); provision of housing and dining facilities and services (34 C.F.R. § 106.41(c)(9)); provision of publicity (34 C.F.R. § 106.41(c)(10)); provision of support services (34 C.F.R. § 106.41(c)); and recruitment of student athletes (34 C.F.R. § 106.41(c)).<sup>3</sup>

The College is not required to provide identical benefits, opportunities, or treatment, provided that the overall effects of any disparities are negligible. A disparity is a difference, on the basis of sex, in benefits or services that has a negative impact on athletes of one sex when compared with benefits or services available to athletes of the other sex. A disparity does not mean that benefits and services are merely different. A disparity may vary considerably in significance, which results in occasional references to “significant” disparities. A “significant” disparity refers to a single disparity that is so substantial as to deny equal opportunity in athletics to students of one sex. A disparity that is not significant, but nevertheless a disparity, becomes evidence to be evaluated along with other disparities that may be evident. There is no rule or number of disparities that when reached constitutes a violation. Generally, the determination is whether, in reviewing the program as a whole, the disparities add up to a denial of equal opportunity to athletes of one sex.

Set forth in Section IV are OCR’s analysis, concerns and/or conclusions as to whether the College provided equal athletic opportunities for male and female students with regard to each of the thirteen relevant areas enumerated above. Within each section for which the complainant had a specific allegation, OCR includes the details of the allegation.

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<sup>3</sup> In addition to the regulation implementing Title IX, the following clarifying OCR policy and guidance documents are also applicable: the OCR Intercollegiate Athletics Policy Interpretation, issued December 11, 1979; 44 Fed. Reg. 71413 (1979); a letter from OCR, dated January 16, 1996, entitled “Clarification of Intercollegiate Athletic Policy Guidance: the Three-Part Test”; a letter from OCR to the General Counsel of Bowling Green State College, dated July 23, 1998; a letter from OCR, dated July 11, 2003, entitled “Further Clarification of Intercollegiate Athletics Policy”; and a Dear Colleague Letter, issued by OCR on April 20, 2010, regarding the Three-Part Test.

## **Facts, Analysis, and Findings**

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

OCR examined whether the College provides 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). OCR considered whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

OCR applied the following three-part test (“Three-Part Test”) to assess whether the College is providing equal participation opportunities for individuals of both sexes:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the College cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

If the College meets any one part of the Three-Part Test, OCR will determine that the College provides each sex with equitable opportunities to participate. Each part of the Three-Part Test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. If the College meets any part of the Three-Part Test, OCR will determine that the College is meeting this requirement. If the College’s athletics program also equitably provides each sex with the level of competition reflective of their respective abilities, OCR will determine that the College is effectively accommodating athletic interests and abilities.

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

Under Part One of the Three-Part Test, where an institution provides intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes. OCR will also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team; i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the

underrepresented sex, a number that might vary by institution.

In academic year 2014-15, there were 740 (55%) male students and 606 (45%) female students enrolled at the College as full-time undergraduates. The College provided a total of 144 participation opportunities in its intercollegiate athletics program.<sup>4</sup> The College provided 98 (or 68% of the total) athletic opportunities for male students and 46 (or 32% of the total) athletic opportunities for female students.<sup>5</sup> Based on this information, OCR determined that in academic year 2014-15, females had 46 (32%) of the athletic opportunities while they represented 606 (45%) of the overall enrollment.

**2014-15 Athletic Program Participation and Full-time Undergraduate Enrollment**

<b>Participants</b>	<b>Participation Rate</b>	<b>Enrollment Rate</b>	<b>Participation Disparity</b>
<b>Men</b>	<b>98 (68%)</b>	<b>740 (55%)</b>	<b>+ 13%</b>
<b>Women</b>	<b>46 (32%)</b>	<b>606 (45%)</b>	<b>- 13%</b>
<b>Total</b>	<b>144</b>	<b>1,346</b>	

In order to meet Part One of the Three-Part Test, the College would need to provide intercollegiate level participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments. The difference between enrollment and athletic opportunities was a difference of 13%. In order to achieve proportionality, female athletic opportunities would need to be increased by approximately 35 for a total of 81. OCR determined that during that school year the College had an average female team size of 15. The underrepresentation of 35 female athletes is greater than the average female team size of 15. Therefore, OCR concludes the College has not satisfied Part One of the Three-Part Test for academic year 2014-15.

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

Under Part Two of the Three-Part Test, where the members of one sex have been and are underrepresented among intercollegiate athletes, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes when the institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex. OCR examined whether the College has a history and continuing practice of program expansion that is

<sup>4</sup> For purposes of determining the number of athletic opportunities, OCR counts all participants who are receiving institutionally sponsored support normally provided to athletes; participating in organized practice sessions and team meetings and activities on a regular basis; and, listed on the squad list; or, who because of injury, cannot meet the first three criteria, but who continue to receive athletic financial aid. For this analysis, the same athlete who participates on more than one team is counted as a participant on each team. In order to determine accurate participation numbers for male and female athletes, OCR scrutinizes the squad lists and other information provided by a recipient.

<sup>5</sup> The College provided squad lists for the 2014-15 academic year which showed the number of female athletes, by team, in academic year 2014-15 was Volleyball 13, Softball 22, and Basketball 11. The number of male athletes, by team, in academic year 2014-15 was Football 61, Baseball 26, and Basketball 11. Each College athlete played on one team.

demonstrably responsive to the developing interests and abilities of the underrepresented female sex.

OCR requested copies or a description of policies, procedures, and criteria for determining how and whether sports will be added to or eliminated from the men's and women's athletic programs by the College. The College responded that the decision to eliminate or add a sports team is driven by budgetary facts and is presented to the College's Board of Trustees who vote and make the final decision.

The College provided the following history of when particular sports began at the College:

- 1924: football, men's basketball, and men's track
- 1928: tennis and golf
- 1974: wrestling
- 1975: baseball
- 1977: women's basketball
- 1979: women's track, volleyball, and softball

In 2006, the College added men's and women's cross country and indoor and outdoor track. These sports were discontinued in the spring of 2010 due to the lack of funding to build a regulation track and the cost of program and entry fees. The number of participants for these sports had been 3 women and 11 men. The College does not have any club or intramural sports. The College added the three current sports for women in 1977 and 1979. In 2006, the College added women's cross country and indoor and outdoor track. These sports had 3 female participants and were discontinued in 2010. These facts do not establish that the College has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented female sex. Therefore, OCR concludes the College has not satisfied Part Two of the Three-Part Test for academic year 2014-15.

*Part Three: Effective Accommodation of Interests and Abilities*

Under Part Three of the Three-Part Test, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes when it can be demonstrated that the interests and abilities of the members of the underrepresented sex have been fully and effectively accommodated by the present program. OCR examined whether the College demonstrated that the interests and abilities of the underrepresented female sex have been fully and effectively accommodated by the present program.

The College is a member of the Kansas Jayhawk Community College Conference. The Conference's website indicates that the Conference offers the following sports for females which are not offered by the College: soccer, cross country, golf, tennis, and indoor/outdoor track and field.

OCR asked the College to describe the methods it has used to determine the athletic interests and abilities of students and to provide copies of any surveys, questionnaires, or assessments conducted of students' athletic interests and abilities. The College's response stated that campus

tours are conducted for all prospective students and that all prospective students who ask about athletics are informed of the College's Recruit Me web page and asked to fill out a questionnaire related to their sport. The College's website has an online inquiry card for all prospective students to request more information, including information by sport. The College's Student Services provides inquiry cards to prospective students which list athletic programs and other activities, but the information is not shared with athletic coaches. If a prospective student identifies a specific sport, the student is asked to complete the Recruit Me questionnaire related to their sport. Once a prospective student applies to the College, the inquiry card information is deleted and the athletic interest information is no longer linked to the student's profile.

OCR requested copies of any notices distributed by the College to male and female students informing them of the intercollegiate athletic opportunities available at the College and how they were distributed. The College's response stated that it informs male and female students about intercollegiate athletic opportunities through the athletics website which lists all sports teams and provides information for each sport. Students who want to attempt to be part of a team can go to the Recruit Me web page for their chosen sport. The College's Admissions office provides interest cards to all prospective students on recruiting trips that list sports and ask prospective students to check a box for the sports they are interested in. View books which have photos and descriptions of all athletic opportunities are distributed at high schools, career fairs, and recruiting events and are available on the College's website.

The College did not provide information to show that the College assessed the athletic interests and abilities of the underrepresented female sex. The College did not provide copies of any surveys, questionnaires, or assessments conducted of students' athletic interests and abilities. Therefore, OCR determined the College has not satisfied Part Three of the Three-Part Test for academic year 2014-15.

As the above facts do not establish that the athletic interests and abilities of the underrepresented female sex have been fully and effectively accommodated by the present program, OCR concludes that a preponderance of the evidence supports a conclusion that the College is in violation of its 34 C.F.R. § 106.41(c)(1) obligation to provide both sexes with equal opportunities to compete.

#### Levels of Competition

In addition to determining whether men and women are afforded equitable opportunities to participate, OCR also will assess the following factors to determine whether the quality of competition provided to male and female athletes equally reflects their abilities:

1. Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities; or
2. Whether the College can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

The College is a member of the Kansas Jayhawk Community College Conference and a part of the National Junior College Athletic Association. Football and baseball compete at the Division I level. Men's basketball, women's basketball, volleyball, and softball compete at the Division II level. OCR asked athletes in the surveys to rate their team's competitive schedule (overly competitive, very competitive, competitive, and not sufficiently competitive). The responding athletes rated their team's competitive schedule overly competitive, very competitive, and competitive. No athletes rated their team's schedule as not sufficiently competitive. OCR asked coaches in the surveys if their team's competitive schedule was sufficient. Coaches answered that their team's competitive schedule was sufficient, except for one who did not know, one who answered N/A, and one who answered no - they play in a tough competitive conference. Therefore, OCR concluded that a preponderance of the evidence supports a conclusion that the College has provided equitable levels of competition for those students afforded athletic opportunities.

### **Findings and Conclusion**

A preponderance of the evidence established that, during the 2014-15 school year, the College has provided equitable levels of competition for those students afforded athletic opportunities. However, female students were underrepresented in the intercollegiate athletics program when compared to their representation in the student population; the College does not have a history and continuing practice of intercollegiate athletic program expansion responsive to the developing interests and abilities of female students; and, the College has demonstrated that it fully and effectively accommodated the interests and abilities of its female students. Therefore, OCR concludes that the College did not comply with 34 C.F.R. § 106.41(c)(1).

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

The regulation implementing Title IX, at 34 C.F.R. § 106.37(c), provides that “[t]o 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.”

In determining compliance with this provision, OCR examines whether the College made proportionately equal amounts of financial assistance (scholarship aid) available to the men's and women's athletics programs. OCR calculates this by dividing the amounts of aid available for the members of each sex by the numbers of male and female participants in the athletics program and comparing the results. An institution is considered to be 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 regulation implementing Title IX. OCR evaluates each case in terms of its particular facts. For example, at those colleges where 1% of the entire athletic scholarship budget is less than the value of one full scholarship, OCR will presume that a disparity of up to the value of one full

scholarship is equitable and nondiscriminatory. Even if an institution consistently has less than a 1% disparity, the presumption of compliance with Title IX might still be rebutted if, for example, there was direct evidence of discriminatory intent.

The College provided OCR the following information about athletic financial assistance. The Kansas Jayhawk Community College Conference allows member institutions such as the College to provide only tuition and books scholarships for all male and female athletes. The dollar value for an in-state athlete enrolled in 12 credit hours is \$350 for books and \$962 for tuition for a total of \$1,312. The dollar value for an out-of-state athlete enrolled in 12 credit hours is \$350 for books and \$1,284 for tuition for a total of \$1,634. The National Junior College Athletic Association rules state that athletes must be enrolled full time and 12 credit hours is the minimum. The dollar values will increase if the coach decides to scholarship an athlete for 15 or 18 credit hours. The College’s policy is that 18 credit hours is the maximum a coach can give to a male or female athlete for books and tuition in any one semester. All scholarships for male and female athletes include a loan of books based on the number of credit hours awarded for tuition. The policies for awarding need-based or merit-based financial assistance for athletes are the same as that for the general student body. OCR determined that the College’s policies and procedures relating to the granting of athletic financial assistance are facially neutral and are not discriminatory on the basis of sex.

In academic year 2014-15, a total of 144 athletes participated in the College’s athletics program based on the squad lists.<sup>6</sup> There were 98 males representing 68% of athletic opportunities and 46 females representing 32% of athletic opportunities. The College provided a total of \$232,890 in athletic financial assistance. Of this amount, \$153,580 or 66% went to male athletes who represented 68% of participants and \$79,310 or 34% went to female athletes who represented 32% of participants. This amounted to a difference of 2% in favor of female athletes. The 2% difference amounted to \$4,785 less athletic financial assistance for male athletes than the \$158,365 amount they would have received if their share of the athletic financial assistance had been awarded in proportion to their 68% participation rate. This disparity was greater than 1%.

**Comparison of 2014-15 Athletic Financial Assistance for Men and Women**

<b>Program</b>	<b>Rate of Participation</b>	<b>Athletic Financial Assistance</b>
<b>Men</b>	<b>98 (68%)</b>	<b>\$153,580 (66%)</b>
<b>Women</b>	<b>46 (32%)</b>	<b>\$79,310 (34%)</b>
<b>Total</b>	<b>144</b>	<b>\$232,890</b>

According to the College, this disparity is the natural result of the College’s practice to allow each coach to offer financial assistance at his/her discretion, with a maximum of eighteen (18) hours tuition and books only. Some coaches believe it is in the best interest of their players to take the maximum hours; others offer fewer hours, trying to help their students take on a manageable load of classes.

OCR determined that in academic year 2014-15, male athletes did not receive athletic financial

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<sup>6</sup> For purposes of analyzing the provision of athletic financial assistance, athletes are counted only one time even if he or she plays on more than one team. Each College athlete played on one team.

assistance in an amount that was substantially proportionate to their respective rates of participation in the athletics program.<sup>7</sup>

### *Athletic Financial Assistance Summary*

During the 2014-15 school year, women comprised 32% of all athletes and received 34% of the athletic financial assistance (a 2 percent difference); men comprised 68% of all athletes, and received 66% of the athletic financial assistance (a -2% difference). The difference in athletic financial aid and athlete participation rates was greater than one percent for the entire athletic scholarship budget for the 2014-15 school year in favor of the women's program.

Prior to OCR's conclusion of the investigation of this component, the College requested to resolve any potential compliance concerns. In order to complete its investigation of this component, OCR would need to investigate the College's proffered legitimate, non-discriminatory reason explaining the disparity via (1) reviewing the athletic financial assistance award made to each athlete and (2) interviewing each coach who made awards to confirm the facts. Then, OCR would need to analyze whether the legitimate, non-discriminatory reason is in fact a pretext for discrimination. As there remain areas to investigate, but the College is willing to resolve potential concerns, OCR determined it is appropriate to resolve this component with an Agreement pursuant to Section 302 of the CPM.

### **III. Other Athletic Benefits and Opportunities**

In ensuring compliance with Title IX, OCR also examines the following components of the College's program to ensure that it is providing equal opportunity for members of both sexes in its intercollegiate athletics program, in accordance with 34 C.F.R. § 106.41(a) and (c). OCR specifically examined the following areas:

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

OCR evaluates compliance with each program component by comparing the availability, quality and kinds of benefits, opportunities and treatment afforded members of both sexes. Institutions

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<sup>7</sup> This conclusion does not take into account any additional sports that may need to be added to effectively accommodate the interests and abilities of male and female students that is addressed later in this letter.

will be in compliance if the compared program components are equivalent; that is, equal or equal in effect.

OCR examines each factor relating to the benefits, opportunities or treatment of male and female athletes in a specific program component. Once each factor has been analyzed, OCR makes a determination for that program component. OCR considers whether the same or similar benefits, opportunities or treatment are provided for all students; or if not, whether the differences have a negative effect on one sex that results in a disparity. When disparities are identified between the men’s and the women’s teams, e.g., if a men’s team received a superior benefit in some way, OCR considers whether the benefit provided to the men’s program was offset by an unmatched benefit to any of the teams in the women’s program. In making this program-wide comparison, and before OCR concludes that a benefit to one of the teams in the women’s program offsets a benefit provided to one of the teams in the men’s program, OCR considers whether the offsetting benefits were equivalent or equal in effect. OCR only finds the benefit offsetting if it had the same or a similar effect on the student athlete(s) or team within this program component.

Once OCR identifies disparities, and if it finds no evidence of offsetting, OCR considers whether the differences between the benefits provided to the men’s and women’s programs are negligible. Where the disparities are not negligible, OCR examines whether the disparities were the result of legitimate, nondiscriminatory factors. If OCR finds no legitimate, nondiscriminatory reasons for the disparities, OCR then determines whether the identified disparities resulted in the denial of equal opportunity to male or female athletes, either because the disparities collectively were of a substantial and unjustified nature or because the disparities in the program component were substantial enough by themselves to deny equal athletic opportunity. The result of this comparison is not to ensure identical benefits, opportunities, or treatment, but rather to ensure that, overall, the athletics program provided equivalent benefits to men and women.

**1. Equipment and Supplies - 34 C.F.R. § 106.41(c)(2)<sup>8</sup>**

Equipment and supplies include, but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and minor conditioning and weight training equipment. In assessing compliance in this component, OCR considers: (a) quality; (b) amount; (c) suitability; (d) maintenance and replacement; and (e) availability of equipment and supplies.

The College provided the following information about equipment and supplies. Each sport has a supplies line in their annual budget to be used for normal repair and replacement of uniforms and equipment and other major equipment purchases.<sup>9</sup> Uniform replacement is normally on a three

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<sup>8</sup> The complainant alleged unequal treatment under this program component as the athletic department funded replacement uniforms of two men’s teams, but did not fund replacement uniforms of a women’s team. The women’s team paid for replacement uniforms out of their team budget.

<sup>9</sup> The College provided a pre-closing monthly expenditure report for the month of June 2015 of fiscal year 2014-15 as of June 15, 2015 which showed the following amounts for supplies:

<b>Team</b>	<b>Revised Budget</b>	<b>YTD Activity</b>
Men’s Basketball	\$10,752.03	\$10,752.03

year rotation for both male and female teams. It is the responsibility of each head coach to see that proper care is taken of all their team’s equipment. All teams use both College budget funds and fundraisers to fund equipment and supplies. Fundraisers are used at the discretion of the coaches. Athletes for all teams confirmed in the surveys that they participated in fundraising. The College provided lists of equipment and supplies for each team.

In assessing the College’s compliance with respect to this component, OCR conducted on-site visits to review the equipment and supplies. OCR also surveyed coaches and athletes regarding equipment and supplies.

Quality

OCR surveyed athletes and asked them to rate the quality of equipment and supplies (excellent, good, fair, and poor). The athletes’ ratings are below. Although some athletes in two men’s sports rated the quality of equipment and supplies poor, other athletes in those same two men’s sports rated the quality of equipment and supplies excellent, good, or fair.

**Quality of Equipment and Supplies**

	<b>Excellent</b>	<b>Good</b>	<b>Fair</b>	<b>Poor</b>
Women’s Basketball	1	1	2	
Men’s Basketball		3	2	
Softball	2	9		
Baseball	6		1	2
Volleyball	3	4		
Football	1	8	9	5

OCR surveyed coaches and asked them to rate the quality of equipment and supplies (excellent, adequate, or substandard). Coaches rated the quality of equipment and supplies as excellent or adequate, except for one coach from one men’s team who rated the quality of equipment and supplies provided to his team as substandard and noted concerns about the quality of facility maintenance equipment, the need to fundraise for facility maintenance equipment, and the lack of a budget for facility maintenance equipment. Three other coaches from this men’s team rated the quality of equipment and supplies adequate. OCR also asked coaches in the surveys to specifically rate the quality of uniforms and other apparel (excellent, adequate, or substandard). Coaches rated the quality of uniforms and other team apparel excellent or adequate.

Amount

Athletes for all teams indicated the amount of practice uniforms, competitive uniforms, shoes, and warm-ups they received (0, 1, 2, or 3 or more). Almost all athletes indicated they received 1

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Women’s Basketball	\$13,166.00	\$12,530.96
Baseball	\$33,600.00	\$15,235.27
Softball	\$ 9,323.17	\$ 9,419.79
Football	\$31,183.16 (equipment \$4,299.95)	\$28,442.54 (equipment \$4,299.95)
Volleyball	\$ 4,000.00	\$5,484.84

to 3 or more practice uniforms, competitive uniforms, shoes, and warm-up tops (about 25% did not receive warm-up bottoms). Athletes for all teams indicated that they participated in fundraisers. OCR surveyed coaches and asked them to rate the amount of equipment and supplies (too many, adequate, or too few). Coaches rated the amount of equipment and supplies adequate, except for three coaches who rated this too few (one coach from one men's team said the budget was not adequate enough, one coach from one women's team said sometimes they have to wait until the following year to replace items because of the lack of funds, and a second coach from the same women's team said they could use more practice equipment and storage). Two other coaches from the same women's team rated the amount of equipment and supplies as adequate. OCR also asked coaches in the surveys to specifically rate the amount of uniforms and other apparel (too many, adequate, or too few). Coaches rated the amount of uniforms as adequate.

### Suitability

OCR surveyed coaches and asked them to rate the suitability of equipment and supplies (excellent, adequate, or substandard). Coaches rated the suitability of equipment and supplies as excellent or adequate. OCR also asked coaches to specifically rate the suitability of uniforms and other apparel (excellent, adequate, or substandard). Coaches rated the suitability of uniforms and other apparel as excellent or adequate. OCR also asked coaches if the equipment, supplies, uniforms, and other apparel met the applicable requirements of the governing/sanctioning body for that sport. Most coaches answered yes, some coaches did not provide answers, and one coach from one women's team said they fundraised for two jerseys to meet NCAA regulations and the team's practice balls were not regulation. Another coach from the same women's team said the equipment and supplies were regulation. OCR additionally asked coaches in the surveys if the equipment, supplies, uniforms, and other apparel were appropriate for the sport. Most coaches answered yes, some coaches did not provide answers, one coach from one men's team said the facility maintenance equipment and playing facility including the scoreboard were substandard and another coach from the same men's team said many scoreboard lights did not work. A third coach from the same men's team said the equipment, supplies, uniforms, and other apparel were appropriate for their sport.

### Maintenance and Replacement

The College provided the following information regarding laundering uniforms:

- Men's basketball - The manager and assistant coach wash practice and game gear daily.
- Women's basketball - The work study student washes the practice and/or conditioning gear after workouts and assists the assistant coach in washing the uniforms after games.
- Baseball - An athlete is designated the laundry chief and that athlete assigns two to three other athletes on a weekly basis to carry out the laundry duties of that week.
- Softball - The coaching staff (head coach and three assistant coaches) are in charge of laundering both the practice and competition uniforms.
- Football - Four work study football athletes wash practice and competition uniforms.
- Volleyball - The student manager or team members launder practice attire and the head coach launders competition uniforms.

The College stated that uniforms are replaced every three years on a rotating basis. Specifically, the College allocates \$8500 from Athletic Department funds for uniform replacement each year. The \$8500 is divided between one to three teams, depending on the year; the funds supplement the coaches' supplies budget, but are intended for uniform purchases. For example, in year 1, football gets the whole amount; year 2, men's basketball, women's basketball, and softball split the amount; and year 3, volleyball, baseball, and spirit squad split the amount. Football is allocated the largest amount because of the number of athletes on the team. Teams are able to supplement/replace uniforms from their own budgets as they see fit.

OCR surveyed coaches and asked them to rate the maintenance and replacement of equipment and supplies (excellent, adequate, or substandard). Coaches rated the maintenance and replacement of equipment and supplies as excellent or adequate, except for two coaches who rated this substandard (one coach from one men's team rated this substandard because of the lack of facility maintenance equipment and budget, but one coach from this same team rated this excellent and two coaches from this same team rated this adequate; one coach from one women's team rated this substandard because the team had to wait until the following year to replace items because there were no funds, but three coaches from this same team rated this adequate). OCR also asked coaches to specifically rate the maintenance and replacement of uniforms (excellent, adequate, or substandard). Coaches rated the maintenance and replacement of uniforms excellent or adequate, except for one coach from one men's team who rated this substandard because funding did not take into account the number of athletes and did not provide a full uniform. One coach from this same team rated this excellent and two coaches from this same team rated this adequate.

#### Availability

OCR surveyed coaches as to whether storage of equipment, supplies, uniforms, and other apparel was adequate. Coaches rated storage as adequate, except for four coaches: 1) one coach from one men's team said they had inadequate storage space (three other coaches from the same men's team said storage was adequate); 2) one coach from another men's team said storage was in a closet in the locker room which was not big enough and had a bad odor; 3) one coach from a women's team said the team needed additional storage and a place of their own; and 4) another coach from the same women's team said some equipment is stored in their locker room which has limited space. One coach from another women's team said storage was adequate, but the walls were plywood, a coach fell into their storage through the ceiling, and it was hard to keep out bugs and dirt (another coach from the same women's team said storage holds what they need it to).

OCR surveyed athletes and asked them to rate the availability of equipment and supplies (excellent, good, fair, or poor). The athletes' ratings are below. Although some athletes in two men's sports rated the availability of equipment and supplies as poor, other athletes in those same two men's sports rated the availability of equipment and supplies excellent, good, or fair.

### Availability of Equipment and Supplies

	Excellent	Good	Fair	Poor
Women's Basketball		2	2	
Men's Basketball		3	2	
Softball	1	10		
Baseball	6	1	1	2
Volleyball	4	2	1	
Football		10	11	2

OCR surveyed coaches and asked them to rate the availability of equipment and supplies (excellent, adequate, or substandard). Coaches rated the availability of equipment and supplies excellent or adequate, except one coach for a women's team who rated availability as substandard because there was limited time available to use the weight room due to its size and the availability to certain sports (three other coaches from the same women's team rated this adequate). OCR also asked coaches to specifically rate the availability of uniforms and other apparel (excellent, adequate, or substandard). Coaches rated the availability of uniforms and other apparel as excellent or adequate.

#### Other Concerns

OCR asked coaches what other concerns they had about equipment, supplies, uniforms, and other apparel for their team when compared to other teams. Coaches from one men's team identified the following concerns: the team does okay with what they have, but they might be a little underfunded compared to other schools in the conference; they aren't as lavish as some teams, which hurts them in recruiting; and they have little money, thus every team in the country has better facilities and uniforms. Coaches from another men's team identified the following concerns: funding from the College, budgets that are not per athlete and are not based on what types of sports need; and it seems they have to fundraise for all of their own stuff. One coach from one women's team identified the following concerns: more money of the athletic director's general budget accounts is spent on men's sports than women's sports and there is more athletic department and school funds spent on football than any other sport. Coaches from another women's team identified the following concerns: the amount in their budgets, not all teams are given comparable budget sizes and therefore some teams are not able to purchase the amount of needed things unless they fundraise or sometimes not at all; and equipment falls apart, they need more storage, and their facility needs upgrades.

#### Equipment and Supplies Summary

Although some men's and women's teams' coaches had concerns regarding quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies for men's and women's teams, these concerns had the same relative impact within the equipment and supplies program component and thus offset each other. Accordingly, OCR concluded there was insufficient evidence to support a conclusion that the College is in violation of 34 C.F.R. § 106.41(c)(2).

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

To determine whether the College 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 considered 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*

In order to determine whether the College is providing equivalent opportunities to male and female athletes with respect to the 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 NJCAA guidelines for each sport.

In response to OCR’s data request regarding the competitive schedules of each men’s and women’s athletic team, the College provided OCR the 2014-15 competitive schedule of each men’s and women’s athletic team. These schedules included both conference and non-conference games. The number of competitive events in which the men’s and women’s teams participated during the 2014-15 school year is reflected in the chart below:

**2014-15 Competitive Events and NJCAA Guidelines by Sport**

<b>Sport</b>	<b>Number of Competitive Events<sup>10</sup></b>	<b>NJCAA Guideline</b>
Men’s Basketball	12 conference /22 non-conference = <b>34</b>	30
Football	7 conference /4 non-conference = <b>11</b>	11
Baseball	42 conference /38 non-conference = <b>80</b>	76
Women’s Basketball	13 conference /19 non-conference = <b>32</b>	30
Volleyball	9 conference /32 non-conference = <b>41</b>	32
Softball	22 conference/28 non-conference = <b>50</b>	30

During the 2014-15 school year, all sports teams at the College met or exceeded the NJCAA guidelines for contests per sport. OCR examined comparable sports. Men’s basketball played 34 games, whereas women’s basketball played 32 games. Baseball played 80 games, while softball played 50 games. Though softball played fewer games than baseball, softball exceeded the NJCAA guideline by 20 games, whereas baseball the NJCAA guideline by only 4 games. None of the coaches or athletes responding to OCR’s survey expressed any concern regarding the number of competitive opportunities provided for their team.

OCR found no disparity between the men’s and women’s athletic programs regarding the number of competitive events as all teams exceeded the NJCAA guidelines, and none of the

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<sup>10</sup> Number of Competitive Events refers to regular season games only, and does not include postseason competition.

coaches or athletes expressed any concerns regarding this component.

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

According to the College's data response, practice schedules are prepared by coaches, in compliance with NJCAA and KJCCC guidelines. There are no written policies or procedures that govern the scheduling of athletic practice times at the College other than those promulgated by the NJCAA and KJCCC.

According to information provided by coaches, all men's and women's athletics teams have regularly scheduled in-season practices. While the number and length of practices varied somewhat by team, OCR found the number and length of practices for men's and women's teams to be comparable. Each men's and women's team practiced on average two to three hours five or six days a week when in season. Coaches and athletes surveyed by OCR reported that the number and length of practice sessions for each team were sufficient.

The time of day teams practiced also varied by team, although during the 2014-15 school year, most teams practiced in the mid to late afternoon or early to mid-evening. Two teams, baseball and softball, reported occasional morning practices. Coaches and athletes surveyed by OCR reported that the times of day of practice sessions for their respective teams were sufficient.

Some coaches and athletes told OCR that generally practice times are convenient, but occasionally conflicts with athletes' class schedules. Athletes reported that when an athlete has such a conflict, the athlete is expected to attend the class, arrive late to practice or leave practice early in order to attend class. In the alternative, either the athlete or the coach may try to work with the class instructor to arrive at a mutually agreeable solution, which may include completing class work in advance. Athletes from all teams reported they schedule their classes around practice times to avoid conflicts.

The men's basketball team coach stated his team's practice time are inconvenient. The men's basketball coach noted that his team's practice times during the fall and spring are scheduled from 6 p.m. to 8:30 p.m., which regularly conflicts with dinner.<sup>11</sup> The coach chose 6 p.m. to 8:30 p.m. for his team's practice, as it is generally cooler by that time and Arnold Arena, where the team practices, lacks air conditioning. Of note, according to the College's data response, the volleyball and softball teams use the 6 p.m. to 8:30 p.m. slot in Arnold Arena during the winter. In response to OCR's survey as to whether practice conflicts with meals or classes, none of the men's basketball, volleyball or softball athletes reported a conflict between practice and meal times. OCR found a slight disparity favoring women's teams as men's basketball practice time regularly conflicts with dinner during two seasons, and women's athletes have the conflict during one season.

All coaches reported that travel for away competitive events occasionally requires athletes to miss a few classes and athletes are expected to make arrangements with instructors to make up missed work. OCR noted no differences between the men's and women's teams regarding the frequency of conflicts with practice or competitive events or the manner in which such conflicts

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<sup>11</sup> The dining hall on campus serves dinner from 5:30 p.m. to 7 p.m.

were addressed by the College. Overall, OCR determined that the College is providing equivalent opportunities to male and female athletes regarding the number and length of practice opportunities. OCR found a slight disparity favoring women regarding time of day of practice opportunities.

*Time of Day that Competitive Events are Scheduled*

According to the College's response, competition schedules for NJCAA and KJCCC conference games are established by the NJCAA conference office and distributed to member schools. Coaches schedule non-conference competition at their discretion after receiving the conference schedule.

All of the coaches indicated that competitive events for their respective teams were scheduled on days and at times appropriate for their sports and that they had adequate opportunities to compete in front of an audience. OCR asked athletes to rate their team's competitive schedule (overly competitive, very competitive, competitive, not sufficiently competitive). All athletes rated their competitive schedules as either overly competitive or very competitive.

*Pre- and Post-Season Competition*

In 2014-15, none of the College teams participated in pre-season competitions arranged by the NJCAA. According to the College's response, the football team played one pre-season scrimmage and the volleyball team played two pre-season scrimmages that were arranged by the coach. The College reported that no individuals or teams qualifying for post-season competition were denied the opportunity to participate. With one exception, coaches for all the men's and women's athletic teams confirmed that post-season competition is by qualification; one football assistant coach indicated that post-season competition for football is by invitation only. The College clarified that football post-season is by invitation, generally determined by the season final standings. Coach responses concurred with the College's, indicating that no team or athlete qualifying for post-season competition was denied the opportunity to compete in post-season events.

*Scheduling of Games and Practice Times Summary*

OCR found a slight disparity favoring women's teams regarding time of day of practice opportunities, however OCR determined the disparity did not rise to the level of denying equal opportunity in athletics to students of one sex as the disfavored men's team coach indicated he chose the later time slot for various reasons.

OCR also noted a slight disparity favoring women's teams regarding pre-season competition, as two of the three pre-season scrimmages played were played by the volleyball team. OCR determined, however, the disparity was not significant as all teams that did not play pre-season games exceeded NJCAA guidelines for competitive events and were therefore provided with ample opportunity for competition with or without pre-season.

OCR determined there is insufficient evidence to support a conclusion that the College failed to

provide 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.

**3. Travel and Per Diem Allowance - 34 C.F.R. § 106.41(c)(4)<sup>12</sup>**

In assessing compliance in this area, OCR considered modes of transportation, housing and dining arrangements furnished during travel, length of stay before and after competitive events, and per diem allowances for the 2014-15 school year. OCR examined the College’s policies and procedures related to travel and per diem. In addition, OCR conducted surveys of College employees and athletes related to travel and per diem.

*Modes of Transportation*

The College has no written policy governing the mode of transportation used by athletic teams to travel to away events. In the College’s response, the College noted that each team arranges their own transportation. The coaches indicated that use of College vehicles is arranged through the head of transportation/logistics.

According to the coaches and OCR’s onsite inspection, the College has passenger vans and one bus available for team travel. At times, charter buses are rented for team travel. During the 2014-15 school year, the volleyball and softball teams used vans as their exclusive mode of transportation to away games. Men’s and women’s basketball used the College’s bus when traveling to away games together and the vans when they traveled independently. Baseball used both the vans and the College’s bus. Football rented charter buses for all away games. Volleyball and softball rented charter buses for 1-3 games during the year. The chart below summarizes modes of transportation used by the College’s sports teams during the 2014-15 school year:

**Modes of Transportation to Away Games During 2014-15**

<b>Sport</b>	<b># Away Games</b>	<b>Van</b>	<b>College’s Bus</b>	<b>Charter Bus</b>
Men’s Basketball	18	9	9 <sup>9</sup>	-----
Football	6	-----	-----	6
Baseball	26	9	17	-----
Women’s Basketball	18	10	8 <sup>13</sup>	-----
Volleyball	18	15	-----	3
Softball	16	15	-----	1

<sup>12</sup> The complainant alleged unequal treatment under this program component as men’s teams’ modes of travel are funded by the transportation department but women teams’ modes of travel are funded out of their respective team budgets.

<sup>13</sup> Women’s basketball only used the College’s bus when traveling together with the men’s basketball team. Men’s basketball used the College’s bus one additional time, without the women’s team.

Based on coach surveys, OCR found that vans are the least desirable mode of transportation, followed by the College’s bus and then a rented charter bus. Their ratings are based on financial considerations and the relative comfort of the modes of transportation.

Coaches reported that when vans are used, coaches drive them and costs associated with the van usage are paid by team budgets; when the College’s bus is used, the College provides a driver, and the costs associated with usage of the College’s bus are paid by the athletic department. When the football team charters buses, payment for the charter buses comes from the transportation department. In contrast, the volleyball and softball teams fundraised in order to pay for their charter bus rentals. The financial aspects of the modes of transportation used by the College’s sports teams are summarized as follows:

**Funding Source for Transportation to Away Games**

Sport	Team Budget	Athletic Department or Transportation Department	Fundraiser
Men’s Basketball	50%	50%	-----
Football	-----	100%	-----
Baseball	35%	65%	-----
<b>Subtotal:</b>	<b>28%</b>	<b>72%</b>	<b>0%</b>
Women’s Basketball	56%	44%	-----
Volleyball	83%	-----	17%
Softball	94%	-----	6%
<b>Subtotal:</b>	<b>78%</b>	<b>14%</b>	<b>8%</b>

Athletes on the baseball team indicated a concern that the College’s bus is unreliable. In addition, one men’s team coach noted that when using the vans, coaches are expected to drive, which can create a danger when coaches are too exhausted to drive. For example, after arriving 2.5 hours before a game and then playing a 7+ hour game, coaches should not be driving. The softball coach noted that the vans are small, and a portion of the squad is often precluded from attending non-conference games because of space and funding considerations. Neither the coaches nor athletes expressed any concerns regarding the comfort level of rented charter buses.

According to the College’s response, the travel budget for each team is set by the athletic director; the costs ranged from \$5,400 to \$7,306.80 as indicated in the chart below and are calculated based on a team’s historical spending.

**Team Travel Budgets for the 2014-15 School Year**

Sport	# of Away Games	Travel Budget	Budget per Away Game
Men’s Basketball	18	\$ 7,475.97	\$ 415.33
Football	6	\$ 13,213.61	\$ 2,202.27
Baseball	26	\$ 5,500.00	\$ 211.54
Women’s Basketball	18	\$ 5,400.00	\$ 300.00
Volleyball	18	\$ 6,100.00	\$ 338.89

Softball	16	\$ 7,306.80	\$ 456.68
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OCR compared comparable sports. Softball’s travel budget exceeded baseball’s by \$1,806.80, even though baseball traveled to more away games. OCR found that the difference in budget between softball and baseball was a disparity favoring women’s teams. Men’s and women’s basketball teams played the same amount of away games, however, the men’s basketball team’s budget exceeded the women’s basketball team’s by \$2,075.97. OCR found that the difference in budget between men’s and women’s basketball was a disparity favoring men’s teams. OCR found that the above two disparities offset each other.

OCR noted that the football team has the largest travel budget. When the travel budget is calculated as travel allowance per away game, the football team’s budget of \$2,202 is also significantly more than any other team. This is a disparity favoring men’s teams. This difference is not offset by any factor favoring the women’s teams. OCR considered whether there was a legitimate nondiscriminatory explanation for the difference in travel budget. The College asserted football’s larger squad demands a significantly higher budget for food and lodging.

Coaches for five of the six athletic teams (excluding football) indicated their allotted travel budget did not cover the team’s actual travel expenses. Coaches indicated that at times they personally fund meals for the team, or book hotels that are cheaper or less convenient in order to stay within the budget. Specifically, the coaches expressed the following budgetary concerns:

- The **baseball** coach noted his budget is insufficient to provide athletes the type of meal they need after 7+ hours of playing, or to travel in charter buses like the football team.
- The **men’s basketball** coach noted his budget is not large enough for his athletes to have only two athletes per hotel room.
- The **softball** coach noted that a portion of the squad is often precluded from attending non-conference games based on transportation and funding considerations. The softball coach also stated that her travel budget is insufficient for her team to meet the travel required by the conference. Her budget was \$7,306, but her actual expenditures were \$13,000.
- The **volleyball** coach stated her budget is insufficient. Her team went over-budget in 2014-15.
- The **women’s basketball** coach explained that she chooses how many away games to schedule based on her travel budget.

OCR considered all the above information regarding the modes of transportation used by men’s and women’s teams, the desirability of the various modes of transportation, and the travel funds budgeted for each team. OCR found a disparity favoring men’s teams as men’s teams transportation was funded by the athletic department or the transportation department 72% of the time, but women’s teams’ transportation was funded by the athletic department only 14% of the time (a 58 percentage point difference). OCR also found that men’s teams traveled via charter bus, the most comfortable mode of transportation, with greater frequency than women’s teams (6 games vs. 4 games). OCR found disparities in the budgets allocated to men’s and women’s teams which overall favored men’s teams.

Housing Furnished During Travel

During the 2014-15 school year, all men’s and women’s teams travelled overnight as needed in order to have an adequate amount of time before and/or after their competitive events.

With regard to lodging, the coaches provided the following information contained in the chart below about arrangements for their respective teams. Men’s basketball is excluded from this analysis because the team had no need for overnight lodging during the 2014-15 school year.

**2014-15 Lodging Arrangements by Team**

<b>Team</b>	<b>Hotels</b>	<b># of athletes per room</b>
Football	Hampton Inn, Dodge City, Quality Inn	2-3
Baseball	Hampton Inn, Wesley Hotel	4
Women’s Basketball	Days Inn, The Dodge House, Conference Center	4
Volleyball	Holiday Inn Express, Comfort Inn, Hampton Inn	3-4 <sup>14</sup>
Softball	Radisson Inn, Super 8, Hampton Inn	4

Coaches and athletes responses to OCR’s survey confirmed that the men’s and women’s teams usually stay in hotels with four athletes per room. The volleyball team noted that occasionally there is a room with only three athletes, though usually it is four to a room. The football athletes were an exception, generally sleeping two to three athletes to a room when they travelled to away events.

Based on the information provided by coaches and athletes, OCR found that the men’s and women’s teams generally stayed in moderately priced hotels. All men’s and women’s teams slept four athletes to a room with the exception of men’s football, which slept two to three athletes to a room. Therefore, OCR found a disparity favoring the men’s athletic program regarding the number of athletes per hotel room at away events.

Per Diem Allowance and Dining Arrangements

The College does not have a policy requiring the use of a per diem for athletes traveling for competition, and all of the coaches indicated they did not provide a per diem for athletes when the team traveled.

In response to OCR’s survey, each head coach described how he or she handled meals for their team when the team travelled.

- Men’s basketball: The team eats sack meals and at fast food restaurants. The team eats as a group; athletes are not given money, however the cost per person is usually five to

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<sup>14</sup> The volleyball coach indicated “3 or 4 to a room depending on numbers, 2 to a bed typically.”

six dollars. The types of fast food restaurants the team frequents are McDonalds, Burger King, Chick-fil-A, Hardee's, Freddy's, Pizza Hut, and Wendy's.

- Football: The team eats sack meals from the cafeteria and drinks Gatorade before departing. In 2014-15, the team ate all postgame meals at Subway. The team ate as a group, and the coach paid the bill. The typical budget per person is \$8-10. No money is given to athletes.
- Baseball: The team eats sack meals and at fast food restaurants. The team eats as one big group in the same restaurant and the coach pays the bill. The typical budget per person is \$5-6. The types of fast food restaurants the team frequents are McDonalds, Burger King, Chick-fil-A, Hardee's, Freddy's, Pizza Hut, and Wendy's.
- Women's basketball: Generally, the team eats a pregame meal in the cafeteria on campus before departing or a sack meal at the game. The team eats a postgame meal in a fast-food restaurant. The team eats as one big group in the same restaurant and the coach pays the bill. Athletes are given a \$7.00 allowance to eat. The team ate at the following fast food restaurants during 2014-2015: McDonald's, Orange Leaf, Culver's, Freddy's, Chick-fil-A, Burger King, Arby's, Pizza Hut, Taco Bell, Subway, El Charro, and Fazoli's.
- Volleyball: Generally, the team eats a sack meal before or during the game. The team eats a postgame meal in a fast-food restaurant. The team eats as one big group in the same restaurant and the coach pays the bill. Athletes are given a \$6.00 allowance to eat. The team ate at the following fast food restaurants during 2014-15: Subway, Applebee's, Panera Bread, Cheesecake Factory, Chipotle, Fazoli's, and Bolling's Meat Market and Deli. The team also occasionally bought packaged items from Wal-Mart or ate in the homes of parents of member athletes.
- Softball: The team eats sack lunches, complimentary meals, and at restaurants when they travel. The team eats as one big group in the same restaurant and the coach pays the bill. The typical budget per athlete is \$7-\$10, depending on the restaurant. The team eats in establishments such as Chick-fil-A, McDonalds, Freddy's, Wendy's, Braum's, Risky's BBQ, Chicken Express, Arby's, Chipotle, Subway, A&W, Qudoba, Fazoli's, and Pizza Ranch.

Many of the surveyed coaches indicated that the travel budget is insufficient, especially for postgame meals. Athletes who responded to OCR's survey confirmed that they were not required to pay for meals when traveling with their respective teams and that they ate at restaurants identified by their respective coaches. The athletes from one women's team expressed concern that the food provided to them from the cafeteria is often not fresh, and athletes from another two women's teams stated that more healthy options need to be offered. One male athlete indicated that food is usually unhealthy fast-food due to budgetary constraints and another male athlete indicated that at times, there is not enough food for the entire team. Overall, insufficient budget for food is an issue all teams experience equally. OCR noted differences in the choices of restaurants between teams, but found generally that

men's and women's teams ate as a team at a range of inexpensive to moderately priced sit-down restaurants, pizza shops, and sandwich shops. OCR found no disparities overall in the number or quality of meals the College provided for the men's and women's teams when they were traveling to and from away events during the 2014-15 school year.

#### Travel and Per Diem Allowance Summary

Regarding mode of transportation, there was a disparity favoring men's teams as men's teams transportation was funded by the athletic department or the transportation department 72% of the time, but women's teams transportation was funded by the athletic department only 14% of the time (a 58 percentage point difference). Men's teams traveled via charter bus, the most comfortable mode of transportation, with greater frequency than women's teams (6 games vs. 3 games).

Both the men's and women's teams stayed in similar hotels and dined in comparable restaurants. There were no disparities overall in the number or quality of meals the College provided for the men's and women's teams when they were traveling to and from away events during the 2014-15 school year. Regarding housing, most coaches reported and athletes confirmed that three to four athletes stayed in a room when an overnight was required with the exception of football, which reported that two to three athletes shared a room. There was a disparity favoring the men's athletic program regarding the number of athletes per hotel room at away events.

Disparities in the travel budget allocated to men's and women's teams overall favored men's teams. Specifically, the football team's travel budget per away game during 2014-15 was more than 4x the size of any other team's budget. However, OCR also noted that the football team is larger than any other team. In order to determine whether the football team's larger budget is equitable, OCR would have to review how the football team allocated the budget, to ascertain whether the team was using it for "extras" that other teams do not receive. Reviewing the budget to that degree of detail would require an additional data request and analysis upon receipt of same. Prior to OCR's conducting the supplemental investigation described above, the College requested to resolve any potential compliance concerns. As there remain areas to investigate, but the College is willing to resolve potential concerns, OCR determined it is appropriate to use the 302 resolution process to resolve this concern.

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

To determine whether the College is providing the men's and women's athletic teams equivalent opportunity to receive academic tutoring and comparable assignment and compensation of tutors, OCR reviewed the College's response and information from the College's website, and surveyed coaches and athletes.

In response to OCR's survey, coaches and athletes confirmed that tutoring is available to athletes through the Student Success Center (Center)<sup>15</sup>, an on-campus tutoring and testing center. In

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<sup>15</sup> According to the director, at the start of the 2014-15 the name of the on-campus tutoring center was the M.I.L.L., which stood for *maximized individualized learning lab*. However, the name was changed to the Student Success

2014-15, the Center employed five tutors, and tutoring was available to all students at the College and the public free of charge. The Center offers its facilities to sports teams to hold their study hall times, so that individuals can receive help with academic assignments. There is no separate athletic budget for tutoring of athletes. As no special tutoring or academic counseling services are provided to athletes as distinguished from the general student body, no further investigation of this program component is necessary.

*Opportunity to Receive Academic Tutoring and Assignment and Compensation of Tutors Summary*

The College does not provide special tutoring or academic counseling services for athletes. The available academic supports, including individual tutoring by trained staff members and work-study tutors, are available to the entire student body, and there are no differences in how these services are accessed by or provided to athletes and members of the general student body. Accordingly, OCR concludes that the evidence is insufficient to establish that the University failed to provide equal opportunities to students of both sexes with respect to the provision of tutoring.

**5. Opportunity to Receive Coaching and Assignment and Compensation of Coaches - 34 C.F.R. § 106.41(c)(5) & (6)<sup>16</sup>**

In determining whether equal athletic opportunities to receive coaching benefits and services are available, OCR compares the opportunity to receive coaching, along with the assignment and compensation of coaches for male and female athletes. OCR examines three factors in determining compliance for the opportunity to receive coaching: (a) relative availability of full-time coaches; (b) relative availability of part-time and assistant coaches; and (c) relative availability of graduate assistants. OCR assesses two factors in determining compliance for the assignment of coaches: (a) training, experience, and other professional qualifications; and (b) professional standing. OCR assesses seven factors in determining compliance for the compensation of coaches: (a) rate of compensation (per sport, per season); (b) duration of contracts; (c) conditions relating to contract renewal; (d) experience; (e) nature of coaching duties performed; (f) working conditions; and, (g) other terms and conditions of employment.

*Availability of Coaches*

For intercollegiate athletics programs, OCR's analysis of the availability of coaches consists of

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Center to more accurately reflect the array of services offered by the center. In the surveys, coaches and athletes used both names.

<sup>16</sup> The complainant alleged unequal treatment under this program component as men's teams are budgeted for more assistant coaches than women's teams; men's teams head and assistant coaches are paid more than their counterparts on women's teams; and resident assistant positions, which augment assistant coaches' compensation through additional salary and free room and board, are offered to more men's assistant coaches than women's assistant coaches. The complainant also alleged unequal treatment because women's teams coaches have never been asked participate on a hiring committee for a new member of the athletic department, and women's teams coaches do not receive funding to attend professional conventions whereas at least one men's team coach does.

separating the women's from the men's program, determining the full-time equivalence (FTE)<sup>17</sup> of coaches in each program, computing the ratio of the FTE of coaches to the number of athletes participating in each program, and finally comparing the FTE ratios of the men's and women's programs to determine any inequity in the availability of coaching.

During the 2014-15 school year, the College had a total of twenty-one coaches on the intercollegiate athletic coaching staff. The College's response indicated that all six head coaches were full-time employees, three assistant coaches were employed full-time, nine assistant coaches were employed part-time, and three assistant coaches were part-time volunteers. According to the coaches' and College's responses, none of the coaches have contracts. Coaches are hired as twelve-month employees of the College. All head and assistant coaches at the College have the primary responsibility of coaching, as well as responsibility for recruitment, monitoring of academics, fundraising, public relations, and teaching and administrative duties for their respective teams. In its initial data response, the College specified the number of head and assistant coaches for each team and the number of athletes on the team as follows:

**2014-15 Coach Numbers and Schedules**

<b>Team</b>	<b># Head Coaches</b>	<b># Assistant Coaches<sup>18</sup></b>	<b>Hrs/Year</b>	<b># Athletes on Team</b>
<b>Men's Basketball</b>	1	1 PT	1300	11
<b>Football</b>	1	3 FT / 3 PT	All FT: 880 All PT: 880	61
<b>Baseball</b>	1	2 PT	1 <sup>st</sup> : 750 2 <sup>nd</sup> : 870	26
<b>Men's Teams Total</b>	<b>3</b>	<b>9</b>		<b>98</b>
<b>Women's Basketball</b>	1	1 PT <sup>19</sup>	897	11
<b>Volleyball</b>	1	1 PT	520	13
<b>Softball</b>	1	1 PT	868	22
<b>Women's Teams Total</b>	<b>3</b>	<b>3</b>		<b>46</b>

OCR noted discrepancies in the College's initial data response, as summarized in the above chart. For example, the College indicated that half the football assistant coaches were employed part-time and half were employed full-time, however, the College also stated that all football assistant coaches worked the same number of hours per year. In addition, the part-time coach did not have a single definition – some part-time coaches worked as few as five hundred and twenty hours, and others as many as thirteen hundred hours.

<sup>17</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.).

<sup>18</sup> Volunteer coaches are not included in this count.

<sup>19</sup> The women's basketball assistant coach was employed from July 2014 to March 2015, when the assistant coach tendered her resignation. After her resignation, the women's basketball team did not have an assistant coach.

In order to accurately determine the FTE of coaches in each program, OCR requested that the College provide clarification regarding how many hours each assistant coach worked in the 2014-15 school year. Though the College provided further data in response to OCR's request, the second set of data raised different discrepancies. For example, in the first set of data, there was a substantial disparity between the hours per year that the men's assistant basketball coaches worked (1300) and the women's assistant basketball coach worked (897). However, in the second set of data, the College indicated that both basketball assistant coaches worked about forty hours per week.

After reviewing and analyzing both sets of data, OCR determined that neither set could be used in order to accurately determine coaching FTEs.

OCR further reviewed the differences in the number of available assistant coaches for the men's and women's programs. Men's basketball and volleyball each had one part-time assistant coach. Women's basketball had an assistant coach from July 2014 to March 2015, when the assistant coach tendered her resignation. Baseball and softball each had three part-time assistant coaches, however two of baseball's part-time assistant coaches were paid and only one of softball's part-time assistant coaches was paid. Football had three part-time and three full time assistant coaches. Generally, the nature of football, including the number of participants needed to field a team, the rate of injury, and the rate of severe injury, often justifies the assignment of several assistant coaches for football.

Athletes from the women's basketball team reported dissatisfaction with the quality of the coaching they received. The athletes on that team noted that their assistant coach is employed as a nurse, and therefore is only available when she is off work. Many also reported dissatisfaction with the quality of instruction from their head coach. Athletes on the softball team noted that their assistant coach is a full-time student which impairs her ability to be at all practices. However, the softball athletes surveyed reported overall satisfaction with the quality of coaching they receive. Some football athletes reported dissatisfaction with coaching (four out of twenty-five surveyed), and some noted concerns regarding ineffective communication among the coaches and between coaches and athletes. All baseball athletes, except one, reported they were satisfied or very satisfied with the quality of coaching provided to them. All men's basketball and volleyball athletes reported they were satisfied or very satisfied with the quality of coaching provided to them. Overall, OCR did not find a significant disparity between men's and women's teams regarding athlete satisfaction with the quality of coaching received.

For the 2014-15 school year, the overall ratio of coaches to athletes for the 2014-15 men's teams is 1:7 (98 athletes to thirteen coaches); for the 2014-15 women's teams it is 1:7 (46 athletes to six coaches). There is no difference between the men's and women's teams regarding the coach to athlete ratio.

OCR was unable to determine accurate FTEs of coaching, and therefore was unable to analyze the ratio of the FTE of coaches to the number of athletes participating in each program, nor was it able to compare the FTE ratios of the men's and women's programs to determine any inequity in the availability of coaching.

Assignment of Coaches

For intercollegiate athletics programs, OCR's analysis of the assignment of coaches includes consideration of the training, experience, other professional qualifications and the professional standing of each coach.

The chart below summarizes the educational background and professional experience of each head and assistant coach in the College's intercollegiate athletics program during the 2014-15 school year.

<b>Team HC/AC</b>	<b>College Athlete in Sport</b>	<b>Education</b>	<b>Years of Experience Non-FSCC</b>	<b>Years of Experience FSCC</b>	<b>Salary</b>
<b>Men's Basketball Head Coach</b>	Yes	BA General Studies	15	6	\$39,815
<b>Men's Basketball Assistant Coach</b>	Yes	MS	9	1	\$10,000
<b>Football Head Coach</b>	Yes	MEd	23	4	\$54,048
<b>Football Assistant Coach</b>	Yes	BS	8	2	\$40,000
<b>Football Assistant Coach</b>	Yes	MS	0	4	\$28,975
<b>Football Assistant Coach</b>	Yes	BS	2	4	\$24,975
<b>Football Assistant Coach</b>	Yes	BS	0	3	\$19,975
<b>Football Assistant Coach</b>	Yes	BS	1	3	\$16,300
<b>Football Assistant Coach</b>	Yes	BS	2	1	\$6,000
<b>Baseball Head Coach</b>	Yes	MA PE	6	8	\$37,121
<b>Baseball Assistant Coach</b>	Yes	BS	8	5	\$9,300
<b>Baseball Assistant Coach</b>	Yes	AS Studying for BA	3	4	\$9,300
<b>Baseball Assistant Coach</b>	Yes	MS Sports Management	1.5	1	\$0
<b>Women's Basketball Head Coach</b>	Yes	MS Recreation and Sports Science	6	3	\$36,016

<b>Team HC/AC</b>	<b>College Athlete in Sport</b>	<b>Education</b>	<b>Years of Experience Non-FSCC</b>	<b>Years of Experience FSCC</b>	<b>Salary</b>
<b>Women's Basketball Assistant Coach</b>	No	MS	1	1	\$10,000
<b>Volleyball Head Coach</b>	Yes	MS PE	9	5	\$31,974
<b>Volleyball Assistant Coach</b>	Yes	AA Working towards BA	0	2	\$9,000
<b>Softball Head Coach</b>	Yes	MS Sports Admin.	7	3	\$32,975
<b>Softball Assistant Coach</b>	Yes	Working towards BS	0	2	\$10,357
<b>Softball Assistant Coach</b>	No	Working towards BS	0	1	\$0
<b>Softball Assistant Coach</b>	Yes	Working towards BS	0	1	\$0

One head coach, the men's basketball team head coach, had not earned a graduate degree in a coaching-related field as of the 2014-15 school year. The College employed five associate level, six bachelor's level and four master's level assistant coaches. For the purposes of this analysis, as of the 2014-15 school year, the men's athletics program had a total of 13 coaches with combined high school and collegiate coaching experience ranging from two and a half to twenty-seven years, with an average of nine and a half years of coaching experience per coach. The women's athletics program had eight coaches with combined high school and collegiate coaching experience ranging from one to fourteen years, an average of five years of coaching experience per coach. A comparison of the average years of coaching experience of the coaches of the men's and women's teams<sup>20</sup> reveals a difference of four and a half years of combined high school and collegiate coaching experience favoring the men's program.

OCR also compared the combined high school and collegiate coaching experience of the head coaches for the men's and women's teams. As of the 2014-15 school year, the head coaches of the three men's teams (football, men's basketball, and baseball) had coaching experience ranging from 14 to 27 years, with an average of 21 years of coaching experience per head coach. The head coaches of the three women's teams (volleyball, women's basketball and softball) had combined high school and collegiate coaching experience ranging from 9 to 14 years, with an average of 11 years of coaching experience per head coach. A comparison of the average years of combined high school and collegiate coaching experience of the head coaches of the men's and women's teams reveals a difference of 10 years of experience favoring the men's program.

Although the differences in the coaching experience between the coaches of the men's athletic

<sup>20</sup> Men's average = 9.6, Women's average = 5.1; Difference = 4.5

program and the coaches of the women’s athletic program favor the men’s athletic program, this evidence alone does not establish that the College routinely assigns coaches with less experience or qualifications to the women’s teams because in some instances coaches with less experience are as effective or more effective than coaches with more experience. Consequently, OCR examined the win-loss records for the men’s and women’s teams for the 2014-15 school year. The chart below shows the coaching experience for the head coaches of the men’s and women’s athletic teams and each team’s 2014-15 win-loss record.

**2014-15 Comparison Coaching Experience and Win-Loss Record**

<b>Sport</b>	<b>Total Years of Coaching Experience</b>	<b>Win-Loss Record</b>	<b>% of Wins</b>
<b>Men’s Basketball</b>	21	14-17	45%
<b>Football</b>	27	4-7	36%
<b>Baseball</b>	14	32-29	52%
<b>Women’s Basketball</b>	9	13-17	43%
<b>Volleyball</b>	14	31-9	78%
<b>Softball</b>	10	22-28	44%

A difference on the basis of sex constitutes a disparity in benefits or services when it has a negative impact on athletes of one sex when compared with benefits or services available to athletes of the other sex. When looking at comparable sports, the evidence does not establish that the difference in coaching experience between the coaches in the men’s and women’s athletic programs constitutes a disparity between the men’s and women’s programs. The men’s and women’s basketball record were very similar, at 45% and 43% respectively. The baseball team did better than the softball team, 52% to 44%. The head coaches for women’s teams have fewer years of coaching experience than the head coaches of the men’s teams, but, on average, the women teams won a higher percentage of games than the men’s teams during the 2014-15 school year (55% to 44% respectively).

*Compensation of Coaches - Coaching Salary*

In determining compliance for compensation of coaches, OCR examines the allocation of funds for coaching to the men’s 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.

OCR compared the total of the coaching salaries paid to all coaches in the men’s athletic program to the total of the coaching salaries paid to all coaches in the women’s athletic program. During the 2014-15 school year, the College spent a total of \$426,131.00 for coaches’ salaries in the men’s and women’s athletics program. Of that, the College paid \$295,809 (69.4%) to coaches in the men’s athletic program and \$130,322 (30.6%) to coaches in the women’s athletics program. OCR found a disparity of 1.3% favoring the men’s program. The chart below shows a comparison of the total salaries paid to coaches in the men’s and women’s athletics programs to the athlete participation rates in the men’s and women’s athletics program for the 2014-15 school year.

**2014-15 Salary Comparison of the Men’s and Women’s Athletics Programs**

<b>Program</b>	<b>Rate of Participation of Student Athletes</b>	<b>Salaries</b>
Men	98 (68.1%)	\$295,809.00 (69.4%)
Women	46 (31.9%)	\$130,322.00 (30.6%)
Total	144	\$426,131.00

OCR also compared the total of the coaching salaries paid to head coaches in the men’s athletic program to the total of the coaching salaries paid to head coaches in the women’s athletic program. During the 2014-15 school year, the College spent a total of \$130,984 on the salaries of head coaches in the men’s program and \$100,965 on the salaries of head coaches in the women’s program with a difference of \$30,019 favoring the men’s program. OCR compared the total of the coaching salaries paid to assistant coaches in the men’s athletics program to the total of the coaching salaries paid to assistant coaches in the women’s athletics program. During the 2014-15 school year, the College spent a total of \$164,825.00 on the salaries of assistant coaches in the men’s program and \$29,357.00 on the salaries of assistant coaches in the women’s program with a difference of \$135,468.00 favoring the men’s program.

The comparisons of coaching salaries of head and assistant coaches in the men’s and women’s athletic programs showed an overall difference in coaching compensation favoring the men’s program. Salaries paid to coaches in the football program are the primary factor contributing to the difference in salaries. Two head coaches from other teams expressed concern that the football team receives disparate treatment, with a higher budget for salaries and travel than any other sport. They noted that assistant football coaches and assistant coaches in other fields with comparable experience receive disparate salaries favoring the football assistant coaches. Coaches across the board expressed concerns that salaries are not high enough, with some noting that the additional work coaches need to take on in order to make ends meet takes away from their ability to fully devote themselves for their respective sports.

With regard to coaching, OCR considers whether differences in compensation are the result of one or more of the following nondiscriminatory factors: the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, the level of competition, and whether a particular individual possesses such an outstanding record of achievement as to justify an unusually high salary. The College’s head football coach, whose salary is substantially higher than any other coach, is one of the most experienced coaches in the College’s intercollegiate athletic program with 27 years of collegiate coaching experience. One of the football assistant coaches receives a salary of \$40,000, which is higher than some of the head coaches on the other teams. However, this assistant coach has seven years of experience as an athlete in the National Football League (NFL). The football team receives a larger proportion of the salary budget, but the team has the largest squad (61 athletes), which requires a large coaching staff including three full time and three part time assistant coaches. The football team has three part-time coaches, two of whom

are paid \$16,000 each, more than any other part-time assistant coach. The part-time football assistant coaches did not have more experience than the part-time assistant coaches for other teams, and in fact were less experienced than many of the other part-time assistants. OCR found there are nondiscriminatory factors to explain the disparity regarding the head football coach and one football assistant. However, OCR did not find nondiscriminatory factors to explain the disparity between the salaries paid to part-time football assistant coaches and part-time coaches on other teams. Therefore, there remains a disparity in coaching salary favoring the men's teams.

OCR's analysis further considered compensation differences between coaching staff in comparable sports such as men's and women's basketball, baseball and softball. During the 2014-15 school year, the College paid the head men's basketball coach a salary of \$39,815.00 and the head women's basketball coach \$36,016.00, with a difference of \$3,799.00. During the 2014-15 school year, the College paid the head baseball coach a salary of \$37,121.00 and the head softball coach a salary of \$32,975.00, with a difference of \$4,146.00 favoring the men's program. OCR considered whether these differences in salary were justified by nondiscriminatory factors. OCR found that the head coaches of both men's teams had more total coaching experience than the head coaches for the two women's teams. Specifically, the head men's basketball coach had 21 total years of coaching experience and the women's head basketball coach had 9 years of total coaching experience. The head baseball coach had 14 total years of coaching experience, whereas the head softball coach had ten total years of coaching experience.

During the 2014-15 school year, the College paid two of the three assistant men's baseball coaches \$9,300 each, and one of the three assistant softball coached \$10,357; the remaining assistant on the baseball team and two assistants on the softball teams were unpaid. In total, the College spent \$18,600 on baseball assistant salaries, and \$10,357 on softball assistant salaries, with a disparity of \$8,243 favoring men's baseball. OCR noted that the paid softball assistant coach received \$1,057 more annually than each of the paid baseball assistant coaches, a slight disparity favoring women's softball. OCR determined that of two disparities, the softball team's loss of a second paid coach position was of greater significance than the baseball coaches' slightly lower salaries. Therefore, OCR found a disparity favoring men's teams regarding the budget allocated for salaries of assistant coaches in the comparable sports of baseball and softball.

During the 2014-15 school year, the College paid the assistant basketball coaches on both the men's and women's basketball teams a salary of \$10,000. Therefore, OCR determined that there was no salary difference favoring either basketball team.

*Non-Coaching Jobs and Salaries at College*

According to the College's data response, in addition to their full-time coaching duties, five of the six head coaches serve as adjunct teachers at the College; the men's basketball coach does not. Each coach's salary per credit hour is summarized in the chart below.

Sport	Salary
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Sport	Salary
Football	\$ 410
Baseball	\$ 460
Women’s Basketball	\$ 460
Volleyball	\$ 460
Softball	\$ 435

According to the College, coaches are considered adjunct faculty. Beginning adjunct faculty members are paid \$410/credit hour. As adjunct faculty members accrue and document their training and experience, they may earn a step-up in salary, first to \$435/credit hour followed by \$460/credit hour.

According to the College’s response, assistant coaches are given adjunct teaching jobs and positions as resident assistants in the dormitories to enhance their respective pay packages.

During OCR’s onsite inspection, the College’s dorm director confirmed that one women’s basketball coach, one volleyball coach, one softball coach and two baseball coaches were resident assistants in Boileau Hall during the 2014-15 school year. The director also confirmed that three football coaches were resident assistants in Greyhound Hall. In total, there were five resident assistants from men’s sports and three resident assistants from women’s sports. OCR found a disparity in allocation of resident assistant positions favoring male teams. OCR looked to see whether there was a nondiscriminatory factors to explain the disparity. The College explained that during 2014-2015, there were more male RAs because there were more male athletes in the dorm; consequently, male sports were responsible to fill more RA slots and ensure adequate supervision of male athletes.

According to the College’s data response, resident assistants were compensated as follows:

**2014-15 Resident Assistant Salaries**

Resident Assistant	Percentage Time on Duty	Salary	Salary per Percent
Football AC #1	10%	\$ 3,320.00	\$ 332.00
Football AC #2	8%	\$ 2,935.00	\$ 366.88
Football AC #3	10%	\$ 2,620.00	\$ 262.00
Baseball AC #1	15-20%	\$ 3,105.00	\$ 155.25 - 207.00
Baseball AC #2	15-20%	\$ 3,345.00	\$ 167.25 - 223.00
Women’s Basketball	10%	\$ 3,719.00	\$ 371.90
Volleyball	10%	\$ 3,390.00	\$ 339.00
Softball	3-5%	\$ 1,990.00	\$ 398.00 - 663.33

OCR found a slight disparity favoring women’s resident assistants in compensation for resident assistant duties. OCR found that the disparity favoring men’s teams in number of resident assistants was offset by the disparity favoring women’s teams in compensation.

According to the College's response, five of the assistant football coaches and the women's basketball assistant coach had assistant teaching positions. The College explained that teaching positions are open to any coaches or assistants who have the needed credentials and who want to teach. The available positions vary from year to year, and assistant coach availability varies based on the coaching assignment agreements current assistants have made with head coaches.

According to the College's data response, football and softball coaches were the only coaches paid for game day duties; OCR found there was no disparity favoring men's or women's teams in payment for game day assistants as football and softball offset each other.

#### *Hiring Committees and Attendance at Professional Conventions*

According to the coach surveys, the baseball and men's basketball coaches have served on hiring committees for the athletic department. None of the coaches of women's teams have served on hiring committees. The College stated coaches were chosen to serve on hiring committees based on coach availability at the time the committee was needed and the individual coach's willingness to serve. Nevertheless, OCR found this to be a disparity favoring men's teams regarding serving on hiring committees.

According to five of the six football coach responses to the coach surveys, the College (and not the team budget) pays for all football coaches to attend the American Football Coach Association convention annually. According to the College, funding for the football coaches to attend the AFCA came from the football team budget, and the College did not provide funding for football or any other sport to attend a professional convention. OCR was unable to reconcile these differing reports. However, OCR was able to determine that both the coach and College responses agree that football was the only team that attended a professional convention during the 2014-15 school year. OCR also determined that both the coaches and the College agree that the funds for attending the professional convention did not come from team fundraisers, but rather from the team's budget or the College directly. No other team was provided with a team budget large enough to attend a professional convention or external College funds to do so. Therefore, OCR found a disparity favoring men's teams regarding financial sponsorship of attendance at professional conventions.

#### *Opportunity to Receive Coaching and Assignment and Compensation of Coaches Summary*

Concerning the assignment of coaches, there were differences between the educational background and amount of coaching experience of the coaches for the men's and women's athletic teams which favored the men's program, but this differences in coaching experience did not appear to impact the effectiveness of the coaching provided to the men's and women's teams.

Concerning compensation for coaches, the College's total compensation for coaches during the 2014-15 school year favored the men's athletics program when compared to the women's athletics program. Some of the differences in compensation between the men's and women's programs were attributable to football, which has a significantly larger team, requiring a larger coaching staff, and to the individual qualifications of the head football coach who has 27 years of

collegiate coaching experience, and one football assistant, who has seven years of NFL experience. There were compensation disparities between the salaries paid to part-time football assistant coaches and part-time coaches on other teams which favored the men's teams.

Concerning compensation of assistant coaches of comparable sport, OCR determined that two of the three baseball assistant coaches were paid (\$9,300 each), but only one of the three softball coaches was paid (\$10,357), leading to two disparities: each baseball coach was paid less than the softball coach, favoring women's teams, however the softball team had one less paid position, favoring men's teams. Of the two disparities, OCR found the softball team's loss of a second paid coach position was of greater significance than the baseball coaches' slightly lower salaries. Therefore, OCR found a disparity favoring men's teams regarding the budget allocated for salaries of assistant coaches in the comparable sports of baseball and softball.

There was a slight disparity favoring women's resident assistants in compensation for resident assistant duties. There was a slight disparity favoring men's teams in the number of resident assistant positions. These disparities offset each other.

With respect to the availability of coaches in 2014-15, OCR was unable to determine accurate FTEs of coaching, and therefore was unable to analyze the ratio of the FTE of coaches to the number of athletes participating in each program, nor was it able to compare the FTE ratios of the men's and women's programs to determine any inequity in the availability of coaching. In order to make a determination on availability, OCR would need to request a third set of data from the College that addresses the discrepancies that appear in the two sets the College provided to OCR.

In addition, according to the College, funding for the football coaches to attend the AFCA came from the football team budget, and the College did not provide funding for football or any other sport to attend a professional convention; according to five of the six coach responses to OCR's coach surveys, the College (and not the team budget) pays for all football coaches to attend the American Football Coach Association (AFCA) convention annually. In order to reconcile the two disparate reports, OCR would need to re-interview the football coaches and/or trace back the receipts of payment for the convention attendance.

Prior to OCR's conducting the supplemental investigations described above, the College requested to resolve any potential compliance concerns. As there remain areas to investigate, but the College is willing to resolve potential concerns, OCR determined it is appropriate to use the 302 resolution process to resolve the remaining concerns within this component.

#### **6. Locker Rooms, Practice and Competitive Facilities - 34 C.F.R. § 106.41(c)(7)**<sup>21</sup>

When assessing compliance with the program component of the provision of locker rooms,

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<sup>21</sup> The complainant alleged unequal treatment between men and women's teams in the size, number, quality, and exclusivity of use of locker rooms. The complainant also alleged the baseball team has preferential access to indoor practice facilities that are appropriate for both baseball and softball. Lastly, the complainant alleged that men's teams receive higher quality practice facilities and amenities.

practice and competitive facilities, OCR analyzes the following six factors:

1. Quality and availability of facilities provided for practice and competitive events;
2. Exclusivity of use of facilities provided for practice and competitive events;
3. Availability of locker rooms;
4. Quality of locker rooms;
5. Maintenance of practice and competitive facilities; and
6. Preparation of facilities for practice and competitive events.

The practice and competitive facilities used by the College’s intercollegiate athletic teams for the 2014-15 school year are identified in the chart below. In addition to the identified practice facilities, all teams had the option to practice indoors in the Arnold Arena during inclement weather.

**2014-15 Facilities by Team**

Team	Competition Facility	Practice Facility(ies)
Men’s Basketball	Arnold Arena	Arnold Arena
Football	Frary Field	Turf Field
Baseball	Lions Field	Lions Field Indoor: David Reagan Clubhouse
Women’s Basketball	Arnold Arena	Arnold Arena
Volleyball	Arnold Arena	Arnold Arena
Softball	Betty Ruth Field	Betty Ruth Field Indoor: David Reagan Clubhouse

*Quality and Availability of Practice and Competitive Facilities*

Head and assistant coaches rated the quality and availability of their team’s practice and competitive facilities along a scale from poor to excellent. The head coaches for each sport rated the quality and availability of their practice and competitive facilities as shown in the chart below.

Sport	Practice Quality	Competition Quality
Men’s Basketball	Poor	Poor
Football	Adequate	Adequate
Baseball	Adequate	Poor
Women’s Basketball	Poor	Poor
Volleyball	Poor	Poor
Softball	Adequate	Adequate

All of the coaches who use Arnold Arena for practice and competition rated the facility as poor. Both the men’s and women’s basketball coaches explained the rating by noting the ceiling leaks when it rains and the bleachers are falling apart and unsafe. The men’s basketball coach added that the facility lacks air conditioning. The volleyball coach added that the floor in the arena,

which was just refinished, is already splitting apart, and the doors to the arena do not seal well, allowing dirt to come in, which in turn quickly diminishes the quality of the equipment. She also explained that birds easily get in and make nests in the facility. The volleyball coach added that the bleachers in Arnold Arena are extremely unsafe.

The baseball coach told OCR he rated his team's facility, Lions Field, as poor because the scoreboard is old and does not consistently work well; the outfield fence is splitting and warping, and in overall bad condition; the outdoor bathrooms flood when it rains, and as a result, the doors are rusted; the backstop net is unsafe, as it has holes through which the ball can strike or injure spectators; and the field generally has poor seating. The softball coach told OCR that her team's field is uneven, the team does not have funding to maintain the field as necessary and the team's locker rooms are housed in a portable building, and lack bathrooms. She stated that the public bathrooms, concessions and press box facilities at the field are of poor quality. Though OCR found that both the baseball and softball teams have valid concerns regarding their facilities, the concerns regarding the baseball field are smaller and more easily fixed than the concerns regarding the softball field. Therefore, OCR found a disparity favoring men's teams when looking at comparable sports facilities.

The football coach noted that his team's practice field does not meet regulation standards – it is 80 yards as opposed to the regulation 100 yards. As all other teams have regulation practice facilities, this is a significant disparity disfavoring a men's team.

The David Regan Clubhouse ("clubhouse") is an indoor practice facility that was built in 2001 by the previous baseball coach. At the front of the clubhouse is a large batting area. The batting area is used by both baseball and softball for batting practice. Baseball uses it for more time, because baseball has more athletes. However, the per-athlete batting time is the same for baseball and softball. The baseball coach explained that he and the softball coach coordinate with each other to ensure both teams have adequate use of the clubhouse. Softball students confirmed they practice hitting in the clubhouse.

Athletes generally rated their respective practice and competitive facilities as fair, adequate or excellent. Two athletes on the women's basketball team rated their shared practice and competition facility as poor, citing the issues with the floor, ceiling and air conditioning raised in the coaches' survey. One student added that the proximity to the roping area is problematic as well. Six of the football athletes who gave their practice facility a fair rating noted that the size of the field does not meet regulation size.

During OCR's August 2015 onsite visit, OCR staff inspected the practice and competitive facilities used by each men's and women's athletic team and found them consistent with athlete and coach reports. Overall, OCR found a disparity favoring men's teams when looking at quality of the practice facilities of comparable sports, as the softball team's facilities are inferior to every other team. OCR also found a significant disparity disfavoring men's teams regarding facility size, as the football team is the only team that lacks a regulation size practice facility.

*Exclusivity of Practice and Competitive Facilities*

To determine whether the College provided the men's and women's athletics programs equivalent exclusivity of their practice and competitive facilities, OCR reviewed practice and facility schedules, inspected practice and competitive facilities in person, and surveyed coaches and athletes. Below is the College's 2014-15 practice schedule for Arnold Arena and the Turf Field, the two shared practice facilities, based on the College's data response.

### **Arnold Arena**

#### **Fall Sport Schedule (August to end of volleyball season)**

10:30 a.m. to 12 p.m.	Spirit Squad (T/Th)
9:30 a.m. to 12:30 p.m.	Men's Basketball (M/W/F)
1:00 p.m. to 3:30 p.m.	Volleyball
3:30 p.m. to 6:00 p.m.	Women's Basketball
6 p.m. to 8:30 p.m.	Men's Basketball
8:30 p.m. to 11 p.m.	Softball/Baseball

#### **Winter Sport Schedule (Day that volleyball ends to the day that basketball ends)**

10:30 a.m. to 12 p.m.	Spirit Squad (T/Th)
9:30 a.m. to 12:30 p.m.	Men's Basketball (M/W/F)
1:00 p.m. to 3:30 p.m.	Women's Basketball
3:30 p.m. to 6:00 p.m.	Men's Basketball
6 p.m. to 8:30 p.m.	Volleyball/Softball
8:30 p.m. to 11 p.m.	Football

#### **Spring Sport Schedule (Day basketball ends to the end of the year)**

1:00 p.m. to 3:30 p.m.	Baseball/Volleyball
3:30 p.m. to 6:00 p.m.	Softball/Women's Basketball
6 p.m. to 8:30 p.m.	Men's Basketball
8:30 p.m. to 11 p.m.	Football

### **Turf Practice Field**

#### **Fall Sport Schedule**

5:30 a.m. to 7:00 a.m.	Men's Basketball
7:00 a.m. to 8:30 a.m.	Softball (T/Th)
9:00 a.m. to 10:30 a.m.	Baseball (Sat)
10:30 a.m. to 12:00 p.m.	Band (Sat, Game Day Only)
12:00 p.m. to 1:30 p.m.	Band (M/Th)
1:00 p.m. to 2:30 p.m.	Baseball (T/Th/F)
1:30 p.m. to 2:30 p.m.	Baseball (M/W)
2:30 p.m. 6:00 p.m.	Football
7:00 p.m. to 8:00 p.m.	Women's Basketball

#### **Spring Sport Schedule**

9:00 a.m. to 11:00 a.m.	Football (Sat)
1:00 p.m. to 2:30 p.m.	Baseball (M/W/F)

1:00 p.m. to 3:00 p.m.	Baseball (T/Th) Football (Sat)
2:30 p.m. to 6:00 p.m.	Football (M/W/F)
3:00 p.m. to 6:00 p.m.	Football (T/Th)

As demonstrated by the above practice facility schedule, during the 2014-15 school year the men's and women's basketball and volleyball teams shared the Arnold Arena and the Turf Field for practice. All teams had Arnold Arena available to them for use during inclement weather.

According to the coach surveys, the baseball team is the only team that has exclusive use of its practice and competition field. The softball coaches indicated the softball team's practice and competitive facility are rented by the College to the city, who in turn rent the field to high schools and other competitive softball teams during the summer. During August through May the College has priority; however during June and July the city has priority. The baseball team's indoor practice facility – David Reagan Clubhouse – is often used by the softball team, as previously discussed.

All coaches confirmed that their teams receive priority use of their practice and competitive facilities during the teams' competitive seasons. The women's basketball and volleyball coaches indicated that occasionally practices were moved during competitive seasons when the Arnold Arena was used for a school or community event.

All coaches surveyed by OCR rated the availability of their practice and competitive facilities as adequate or excellent except the women's basketball coach, who gave a poor rating as the facility is shared with seven other teams.

Most athletes responding to OCR's athletics survey rated the availability of their practice and competitive facilities as fair, good or excellent. One women's basketball athlete rated the availability of her team's practice facility as poor due to the number of teams that practice in Arnold Arena. For that same reason, two women's basketball athletes, one men's basketball athlete, and one volleyball athlete rated the availability of their respective team's competitive facility as poor. One football athlete rated his team's competitive facility as poor, but did not provide an explanation.

Some male and female athletes both rated Arnold Arena as poor. OCR found that one men's team and two women's teams are impacted by the defects in Arnold Arena, creating a disparity favoring men's teams. OCR assessed whether a nondiscriminatory factor explained the disparity. The nature of the two other men's sports played at the College – baseball and football – preclude the use of Arnold Arena, an indoor gym, as a practice facility. The nature of the teams that use Arnold Arena – volleyball and basketball – demand an indoor gym practice facility. All teams that by their nature require a gym structure for practice use Arnold Arena. The defects in Arnold Arena impact both the men's and women's teams that practice in Arnold Arena, and thus do not create or contribute to a disparity between the men's and women's athletics programs

Based on the College's facility schedules provided by the College and information provided by the coaches and athletes, OCR found a slight disparity favoring the men's team in that baseball

had the exclusive use of its field, while softball did not. However, the softball coach indicated that despite the lack of exclusivity, the team’s practice and competitive facility is generally available when needed by the team.

OCR found no other disparities in the exclusivity of practice and competitive facilities in the College’s intercollegiate athletics program. The College is providing equivalent exclusivity of practice and competitive facilities in the men’s and women’s athletics programs.

Quality and Availability of Locker Rooms

To determine the quality and availability of the locker rooms the College provided the men’s and women’s teams, OCR inspected the locker rooms for each men’s and women’s athletic team, and surveyed coaches and athletes.

Sport	# of Lockers	Exclusive <sup>22</sup> Use	Showers	Restrooms	Other Amenities
Men’s Basketball	15	Yes <sup>23</sup>	Yes	Yes	DVD player, stereo, carpet, one futon, one stool, folding chairs
Football	93	Yes	Yes	Yes	Wooden locker with seat and lockable storage area, overhead lights, 2 fans, stereo
Baseball	32	Yes	Yes <sup>24</sup>	Yes	3 big TVs, a ping pong table, 32 folding chairs, a DVD player, speakers, couch, 2 upholstered chairs and a refrigerator, baseball cleaning machine, vacuum, 2 washers, 2 dryers, coach lockers, desk
Women’s Basketball	15	Yes <sup>25</sup>	Yes	Yes <sup>26</sup>	Fans, whiteboard, carpet, small fridge, 1 black futon, 4 small black chairs, 1 stereo system
Volleyball	15	Yes	Yes	Yes <sup>17</sup>	Rubber mats, hardwood floor, heating and air, 2 La-Z-Boy recliners, 35 in. TV, stereo with DVD player, 4 fans,

<sup>22</sup> For purposes of this analysis, exclusivity refers to exclusive use at the time of the practice session or competition. Exclusivity of use will be affected only if other teams or groups use the facility at the same time as the team practice or competition.

<sup>23</sup> The men’s basketball locker room is also used by the visiting women’s basketball teams for one tournament and by visiting women’s volleyball teams for every home game.

<sup>24</sup> While there is one shower stall, it is blocked and not in use.

<sup>25</sup> The women’s basketball locker room is also used by visiting men’s basketball teams.

<sup>26</sup> The women’s basketball and volleyball teams’ respective locker rooms share one restroom.

Sport	# of Lockers	Exclusive <sup>22</sup> Use	Showers	Restrooms	Other Amenities
					whiteboard
Softball	18	Yes	No	No	Team meeting area, 25 stools, 2 long benches, 1 air conditioner (not in team meeting area), 3 fans, 1 refrigerator, couch

The football team has two large locker rooms whose combined dimensions are substantially larger than the locker rooms for all other men’s and women’s athletic teams; however, the rooms are appropriately sized given the size of the football team and the amount of equipment assigned to each member of the football team. OCR considered the dimensions of the lockers rooms of comparable sports. The men’s basketball team’s locker room is larger than the women’s basketball team (22 feet x 18 feet 3 inches vs. 25 feet 7 inches x 9 feet 11 inches respectively), and the baseball team’s locker room is substantially larger than the softball team’s locker room (22 feet x 18 feet 2 inches vs. 11 feet 4 inches x 18 feet 2 inches respectively). OCR found a disparity favoring men’s teams regarding locker room size.

OCR considered the quality and dimensions of the actual lockers. All teams’ lockers are made of wood. Men’s basketball team’s lockers are substantially taller and wider than women’s basketball team lockers. The baseball team’s lockers are larger than the lockers used by the softball team. On average, OCR found the men’s lockers were greater in height and width, a disparity favoring men’s teams. However, none of the coaches or athletes voiced any complaints regarding the size of the lockers.

Five of the teams have showers and restrooms in their locker rooms; softball does not. Two of the men’s teams – baseball and basketball – indicated that the shower stall is used for storage and athletes shower in the dormitory. Women’s basketball and volleyball share a restroom that contains one toilet, one sink and one shower. The football team has a shower room with five shower heads, and is the only team that has two restrooms. OCR found a disparity favoring men’s teams regarding the locker room amenities of showers and restrooms.

Baseball is the only team that has its own washers and dryers; all the other teams use shared laundry facilities located next to the training room. OCR found a disparity favoring men’s teams regarding laundry facilities. The other amenities in the various locker rooms vary, as indicated in the table above. The baseball and volleyball team have more extensive amenities than the other teams, as those two teams fundraised to improve the locker rooms. The football and softball teams do not have a couch, recliner, futon or other comfortable seating option; of the teams that have such seating options, the furniture ranges in quality and age, with the newest ones present in the volleyball and baseball locker rooms.

During OCR’s onsite visit, OCR compared the baseball locker room with the softball locker room. As noted above, the softball locker room has smaller dimensions and the coaches noted it

is cramped and uncomfortable; the locker room is basically used for changing and nothing else. Some of the athletes are required to share lockers, as there are an insufficient number of lockers. The already cramped room is used for storage as well. In contrast, the baseball locker room has ample space and updated furniture. There is a locker for every athlete, three TVs, a ping-pong table for recreation and upholstered chairs. There is a separate section in the facility that houses the baseball team's locker room for storage and laundry. Overall, OCR found a disparity favoring men's teams when looking at the locker room quality and amenities of comparable sports.

In response to OCR's survey, all coaches rated the availability of their locker rooms as adequate or excellent. With regard to quality, five coaches rated their teams' locker rooms as adequate or excellent. Softball rated the quality of the team's locker room as poor because of its small size, lack of amenities, and insufficient number of lockers. The following are additional concerns expressed by the coaches in response to OCR's survey:

- The women's basketball coach noted there is no air-conditioning,<sup>27</sup> there are not enough lockers for the entire team, and there is inadequate space in general in her team's locker room.
- The softball coach described her team's locker room as deficient in that it lacks indoor plumbing and laundry facilities, and the locker room is not big enough for the entire team (18 lockers, 22 athletes), per above.
- The volleyball coach noted that there is water damage to the locker room floor, along the right wall, about one foot out from the wall. The 2014-15 school year was the second time a leak occurred; the first time was about a year prior. The College was able to flatten the floor after the first leak. During OCR's onsite inspection, the College was using air conditioning and cinder blocks to flatten the floor after the second leak.

The head and assistant coaches for men's and women's basketball, volleyball, softball and baseball all confirmed that their teams had exclusive use of their assigned locker rooms during practice and competition times. One football coach noted a lack of exclusivity in that the locker rooms are a "community locker room." Coaches for the men's and women's basketball and football teams acknowledged that the use of their team locker rooms by visiting teams did not interfere with their teams' use of their assigned locker rooms for practice and competition.

Coaches for all teams said they assigned lockers to individual athletes. All sports other than football and men's basketball indicated that locker assignments are for the entire year; football and men's basketball assign lockers for the season. The women's softball coach said during the 2014-15 school year, the team did not have enough lockers for each athlete to have her own locker; consequently, she assigned more than one athlete to some of the team lockers.

Athletes who responded to OCR's survey expressed concerns with the quality and availability of

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<sup>27</sup> According to the women's basketball coach, her team's locker room lacked air conditioning during the 2014-2015 school year; however, none of the students noted lack of air-conditioning as a concern when they were surveyed about the locker rooms. In addition, according to the College, the women's basketball locker room did have air-conditioning during 2014-2015. The locker room had air conditioning during OCR's on-site investigation.

team locker rooms during the 2014-15 school year. On the survey, athletes were asked to rate the quality of their team's locker room on a scale of excellent, good, fair and poor. Eight football athletes, one softball athlete, and one volleyball athlete gave the quality of their respective locker rooms a poor rating without providing an explanation. The remaining athletes gave the locker room quality good or excellent ratings.

Four women's and four men's basketball athletes rated the quality of their locker rooms, however, none of the basketball athletes commented on the locker room quality. The men's ratings were: one excellent, two good, and one fair. The women's ratings were: three good and one fair. None of the men's or women's basketball athletes noted any issues with the locker room air conditioning.

All of the baseball athletes rated their locker rooms as excellent; in contrast, most of the softball athletes (eight out of eleven) rated their locker room as fair or poor. None of the baseball athletes explained their ratings. One softball athlete explained the reason for her "fair" rating, stating her team's locker rooms are too small.

One football athlete who provided his team's locker room with a "fair" rating stated that he knows the locker room is better than it used to be, but still feels it is far behind others.

On the survey, athletes were also asked to rate the availability of their team's locker room on a scale of excellent, good, fair or poor. A number of athletes (including 11 football athletes, one women's basketball athlete, and one men's basketball athlete) rated the availability of their team locker room as fair. Two football athletes explained the fair rating was due to the locker room often being locked.

Athletes from the football and softball teams indicated that some athletes on each team are required to share lockers. On the softball team, athlete sharing was the result of an insufficient number of lockers. On the football team, athlete sharing was the result of players who attend practice but are not on the official roster.

Overall, OCR found disparities favoring men's teams regarding locker room size and amenities within the locker rooms. The disparities within this sub-component were not offset by any corresponding disparities favoring women's teams. OCR determined the College is not providing equivalent quality locker rooms in the men's and women's athletics programs.

While some teams noted that at times their locker rooms are used by other teams, all teams indicated that the locker rooms are available during their practice and game times. Therefore, OCR determined the College is providing equivalent availability of locker rooms in the men's and women's athletics programs.

#### *Maintenance and Preparation of Practice and Competitive Facilities*

All coaches indicated that coaches and athletes maintain the team locker rooms. The baseball and softball coaches confirmed that their teams generally maintain their own practice and competitive facilities, however the softball coach noted that maintenance staff usually mows their field, and the baseball coach stated that maintenance staff occasionally mows their field.

Football, men's and women's basketball, and volleyball coaches stated that school maintenance staff cleans all non-locker room areas in their respective facilities.

All head and assistant coaches for sports that use Arnold Arena (volleyball and men's and women's basketball) rated the maintenance and preparation of their practice and competitive facilities as poor. According to the coaches, maintenance staff was not present often enough or at key times, maintenance does not attend to the locker rooms, and maintenance staff does not fix items adequately.

All coaches indicated that coaches and athletes conduct maintenance and preparation of their own practice and competitive facilities and asserted that the maintenance and preparation are done well.

Athletes responding to OCR's athletics survey generally indicated that the maintenance and preparation of their practice facilities was good or excellent, with the exception of:

- Football: Eight athletes gave maintenance a fair rating and one gave a poor rating. Only one student explained his rating, noting that rocks are at times left on the field.
- Men's Basketball: One athlete gave a fair rating and two athletes gave a poor rating. Two of the athletes explained their rating as stemming from the lack of air conditioning.
- Volleyball: One athlete gave a fair rating, but did not explain why.

OCR found that the defects in maintenance of Arnold Arena impact both the men's and women's teams that practice in Arnold Arena, and thus do not create or contribute to a disparity between the men's and women's athletics programs. Overall, OCR noted a slight disparity favoring men's teams regarding the maintenance of the facilities of comparable sports.

#### *Locker Rooms, Practice and Competitive Facilities Summary*

The College is providing equal opportunity to men's and women's teams regarding availability of practice and competitive facilities. The College is providing equivalent exclusivity of practice and competitive facilities in the men's and women's athletics programs. While some teams noted that at times their locker rooms are used by other teams, all teams indicated that the locker rooms are available during their practice and game times.

Regarding quality of practice and competitive facilities, OCR found a disparity favoring men's teams when assessing the practice facilities of comparable sports. OCR also found a significant disparity favoring women's teams regarding facility size, as the football team is the only team that lacks a regulation size practice facility.

There were disparities favoring men's teams regarding locker room size and amenities within the locker rooms. The disparities within this sub-component were not offset by any corresponding disparities favoring women's teams. There was a slight disparity disfavoring men's teams regarding maintenance of the facilities of comparable sports, in that softball's field is often mowed by maintenance, but baseball's field is only occasionally mowed by maintenance. The disparity favoring men's teams regarding locker room size and amenities is a more substantial

disparity that is not offset by the slight disparity regarding maintenance disfavoring men's teams.

Therefore, based on the foregoing, OCR determined there was sufficient evidence to support a conclusion that the College is in violation of 34 C.F.R. § 106.41(c)(7) with regard to:

- quality of practice and competitive facilities;
- facility size; and
- locker room size and amenities within the locker rooms.

**7. Medical and Training Facilities and Services - 34 C.F.R. § 106.41(c)(8)<sup>28</sup>**

In determining compliance with the provision of medical and training facilities and services component, OCR considers the following factors: (a) availability of medical personnel and assistance; (b) health, accident and injury insurance coverage; (c) availability and quality of training facilities; (d) availability and quality of weight and conditioning facilities; and (e) availability and qualifications of athletic trainers.

According to the College's response, the following individuals comprised the College's medical and athletic training staff during the 2014-15 school year:

- Head Athletic Trainer

Certifications: Certified Athletic Trainer

Certified Corrective Exercise Specialist

Basic Life Support Certified

- Medical Personnel – Orthopedic Nurse Practitioner

Certifications: Certified Advance Practice Registered Nurse

Basic Life Support Certified

- Intern Athletic Trainer

Certifications: Certified Athletic Trainer

Basic Life Support Certified

- 3-6 Student Trainers<sup>29</sup>

**Availability of Medical Personnel and Assistance**

Coaches for all men's and women's teams confirmed that the team's medical personnel does not attend team practices, home events, or away events for any teams except football but is available

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<sup>28</sup> The complainant alleged unequal treatment under this program component as the College's athletic trainer travels to all away games with the football team, and if the volleyball team has a game at the same time, they must play without a certified athletic trainer available.

<sup>29</sup> According to the trainers' surveys, the 2014-15 school year began with 6 athletic trainers, however 3 student trainers quit their respective positions after the first semester. Student trainers are students who receive scholarships to the College and take on the responsibility of assisting the trainers.

by phone for all teams. Attendance of medical personnel exclusively for football constitutes a difference favoring the men’s athletic program with regard to the availability of medical personnel and assistance. The availability of medical personnel only at football games, however, is justified by a nondiscriminatory factor; the nature of the sport of football is such that substantially higher rates of injury occur in football than in any other men’s or women’s athletic program offered at the College.

The athletic director confirmed that annual physical examinations of athletes are required, per NJCAA regulations. An athlete may choose to have his or her family doctor or another doctor perform the physical; in the alternative, the College offers physicals on-campus at a cost of about \$20 per athlete. The athlete pays the cost of the physical. The coaches and athletes of all teams confirmed the availability of school physicals in their respective surveys. Based on information from the athletic director, coaches, and athletes, OCR found no disparity between the men’s and women’s athletic programs with regard to the College’s provision of annual physical examinations for athletes.

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

According to the College’s response, coach surveys and athlete surveys, the College expects all athletes to have primary health insurance, and the College provides secondary health insurance coverage. The secondary health insurance is provided to all athletes on all men’s and women’s teams, without regard to the team or gender of the athlete. The secondary insurance provided by the College supplements an athlete’s personal health insurance. OCR found no disparity between the men’s and women’s athletic programs with regard to the College’s provision of insurance coverage for athletes.<sup>30</sup>

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

According to the College’s response, during the 2014-15 school year, all teams used the weight and conditioning facility in the southwest corner of Arnold Arena. The room is accessed by the various teams in accordance with the following schedule:

##### Fall Season

5:00 a.m. to 7:30 a.m.	Football
12:30 p.m. to 3:00 p.m.	Women’s Basketball (M/W/F) Softball (T/Th)
2:00 p.m. to 6:00 p.m.	Football (Sun)
3:00 p.m. to 5:00 p.m.	Men’s Basketball (M/W/F) Volleyball (T/Th)
5:00 p.m. to 7 p.m.	Football (M) Football/Baseball (W)

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<sup>30</sup> The baseball coach noted that, at times, there seems to be a difference in the speed at which a football athlete is sent to the hospital for treatment for injuries sustained off campus, as opposed to baseball athletes who are kept out of the hospital for longer to avoid increasing the insurance premiums; however this does not indicate a difference in actual coverage, but rather use of coverage.

	Baseball (Th)
6:00 p.m. to 8:00 p.m.	Softball (Sun)
7:00 p.m. to 9:00 p.m.	Baseball (M/W/F)

Spring Season

5:00 a.m. to 9:00 a.m.	Football
12:30 p.m. to 3:00 p.m.	Women's Basketball (M/W/F) Men's Basketball (S/T/Th)
3:00 p.m. to 5:00 p.m.	Football (Sun/T/Th) Volleyball (M/W/F)
5:00 p.m. to 7 p.m.	Softball (M/W/F)
7:00 p.m. to 9:00 p.m.	Baseball (M-F)

Coaches asserted that in season teams get priority in scheduling the weight training facilities. OCR noted during the fall season, football players accessed the training room the most often, at fifteen and a half hours per week, followed by baseball at eight hours per week, women's basketball, men's basketball and softball at six hours per week, and volleyball at four hours per week. During the spring season, football accessed the training room the most, at twenty six hours per week, followed by baseball at ten hours per week, and the remaining teams at six hours per week. OCR found that overall, men's teams accessed the weight room significantly more than women's teams. Although some difference can be accounted for based on the difference in weight training needs of the different sports, OCR noted that at least one women's coach (softball) felt there is not enough time for all athletes to adequately access the weight room. Therefore, overall, OCR found a disparity favoring men's team regarding access to the weight training facilities.

In assessing comparable sports, baseball accessed the weight room two hours per week more than softball in the fall, and four hours per week more in the spring. OCR therefore found a slight disparity favoring men's teams regarding comparable sports.

All coaches rated the quality of the weight training facilities provided for their respective teams as adequate or above. All of the coaches rated the quality and availability of the conditioning facilities and services provided for their respective teams during the 2014-15 school as adequate or excellent.

The weight room was remodeled during the summer of 2015. However, the coaches had the following comments regarding the equipment and cleanliness of the weight training facility during the 2014-15 school year:

- Cardio equipment is subpar;
- Room in general is dirty, unclean; and
- Remodel was done without consulting coaches from teams other than football regarding what type of equipment their teams required or would benefit from.

Athletes responding to OCR's survey were asked to rate the quality of the weight training facilities and services provided to athletes in the College's intercollegiate athletics program

during the 2014-15 school year using a scale of excellent, good, fair, or poor. A number of athletes rated the quality as either fair or poor. Following is the information those athletes provided OCR.

- Six football athletes rated the quality of the weight room as poor. Two of those athletes explained that the room is too small. One noted there is little air circulation.
- Ten football athletes rated the quality of the weight room as fair. One athlete explained that during the 2014-15 school year, the equipment was insufficient, but agreed that the recent acquisition of new equipment and weights improved the quality of the room for the 2015-16 school year.
- Three men’s basketball athletes rated the quality of the weight room as fair. One noted the “low budget is evident.”
- Two baseball athletes, one volleyball athlete, and one women’s basketball athlete rated the quality of the weight room as fair, but did not provide an explanation.

Additionally, athletes were asked to rate the availability of the weight training facilities and services provided to athletes in the College’s intercollegiate athletics program during the 2014-15 school year using a scale of excellent, good, fair, or poor. A number of athletes rated the availability as either fair or poor. Below is the information those athletes provided OCR.

- Three baseball athletes, six football athletes, three men’s basketball athletes, one softball athlete, one volleyball athlete, and four women’s basketball athletes rated the availability of the weight training facilities as fair. Only three of those athletes provided an explanation for the fair rating. All three noted that the facility is shared by all teams and therefore must be scheduled in advance and is not freely available when needed.
- One baseball athlete rated the availability of the weight training facilities as poor, explaining since the room can only be used during the time scheduled for the team, athletes cannot go on their own to train during their free time.
- Ten football athletes rated the availability of the weight training facilities as poor.

According to the College’s response, the College does not employ a director of strength training. Coaches of each team are responsible for supervising use of the weight room and athlete workouts.

Overall, concerns regarding the type and quality of the equipment and cleanliness of the weight room during the 2014-15 academic year are issues all teams experience equally.<sup>31</sup> Based on the information provided by the College, coaches, and athletes, OCR found no disparities in those areas. However, OCR found a disparity favoring men’s teams regarding the availability of the weight training facility.

*Availability and Qualifications of Athletic Trainers and Availability and Quality of Athletic Training Facilities*

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<sup>31</sup> OCR is not addressing the quality of the College’s weight and conditioning facilities after they were reported remodeled in the summer of 2015.

According to the head athletic trainer, during the 2014-15 school year, the College employed only one full-time athletic trainer – the head trainer himself. An intern athletic trainer assisted the head athletic trainer part-time. The intern athletic trainer told OCR he splits his time between the College and Fort Scott High School, providing about 30% of his time to the former and 70% of his time to the latter. The intern athletic trainer assists the head athletic trainer daily from 12 p.m. to 3 p.m., during treatment hours, and provides coverage when there are conflicting games. Three to six students served as student trainers at different points over the course of the 2014-15 school year. All student trainers were required to assist at football practices and games. Student trainers were permitted to choose which additional team practices, if any, they attended.

According to the head athletic trainer, the athletic training staff is assigned based on the injury potential of the sport. Football has higher impact and higher quantity injuries than any other sport. When there are conflicting sport practices, the head athletic trainer tries to stop in at every sport at some point during the practice. Football practice always takes priority due to the injury potential.

With regard to home games, the head athletic trainer reported that he, the intern athletic trainer, and all student trainers attended all football games. The head athletic trainer attended the home games of all other sports as well. If there were two conflicting home games, the head athletic trainer attended one, and the intern athletic trainer attended the other. Student trainer attendance at non-football games varied over the course of the 2014-15 school year.

The head athletic trainer reported that he and all the student trainers travel with the football team to away games. The head athletic trainer will travel with other sports teams only if there are no conflicting events at the College. The head athletic trainer told OCR that he attended many men’s and women’s basketball away games, one volleyball away game, and two baseball away games. The intern athletic trainer attended some softball away games. For the away games that neither of the College’s athletic trainers attended, the head athletic trainer contacted the opponents’ trainer to cover training duties for any injury.

Both athletic trainers expressed concern that one full-time athletic trainer is insufficient to adequately treat all athletes and indicated an additional full-time athletic trainer would ensure training staff could be at every practice and all away games, providing better care to the College’s athletes.

Coaches indicated how often a professional athletic trainer attended home and away games, and practices.

**2014-15 Trainer<sup>32</sup> Attendance at Team Events**

<b>Sport</b>	<b>Home Events</b>	<b>Away Events</b>	<b>Practices</b>
<b>Men’s Basketball</b>	Always	Occasionally	Unknown
<b>Football</b>	Always	Always	Always
<b>Baseball</b>	Always	Occasionally	Occasionally <sup>33</sup>

<sup>32</sup> Trainer refers to either the head athletic trainer or the intern athletic trainer, but not student trainers.

Sport	Home Events	Away Events	Practices
Women’s Basketball	Always	Occasionally	Occasionally
Volleyball	Always	Occasionally	Always
Softball	Always	Occasionally	Occasionally

Coaches also rated the quality and availability of the College’s athletic training staff. On a scale of excellent, adequate, fair, or poor, all coaches indicated the quality and availability of the athletic training staff during 2014-15 as excellent or adequate. The volleyball coach qualified her adequate rating, noting that availability tends to be poor, but the trainer does his best.

According to the College’s response and coach and athlete surveys, all men’s and women’s intercollegiate athletic teams at the College use one training facility located in Arnold Arena. The training facility is in the same building as the men’s and women’s basketball, women’s volleyball, and football teams’ locker rooms. The baseball team’s locker room is one-third of a mile away, and the softball team’s locker room is one-fourth of a mile away.

The head athletic trainer told OCR the facility has sufficient supplies and equipment to meet the needs of all the athletes, and he uses his budget to replenish dwindling supplies as needed. The athletic trainers acknowledged that the size of the room is insufficient. The intern athletic trainer stated that during treatment hours, it is often necessary to conduct an athlete’s injury rehabilitation in the gym due to lack of space. The training facility is maintained by maintenance staff, athletic trainers, and student trainers.

According to the trainer, all teams have access to the training facility. The intern athletic trainer told OCR drop-in treatment hours are from around 8:30 a.m. to 11 a.m. Pre-practice treatments run from 12 p.m. to 3 p.m. Typically women’s basketball, volleyball, softball, and baseball athletes receive treatment between 12 p.m. and 1 p.m., football athletes receive treatment from 1 p.m. to 3 p.m., and men’s basketball athletes receives treatment one hour prior to their evening practice.

In response to OCR’s surveys, athletes rated the quality of the training facility as excellent, adequate, fair or poor. Two baseball athletes, eight football athletes, two men’s basketball athletes, one volleyball athlete, one women’s basketball athlete, and six softball athletes rated the quality of the training facility as fair. An additional eight football athletes, two baseball athletes, and one male basketball athlete rated the quality of the training facility as poor. Those athletes who explained their selection of the fair or poor rating identified the small size of the facility as a concern.

Athletes also rated the availability of the training facility as excellent, adequate, fair or poor. Two men’s basketball athletes, seven football athletes, two women’s basketball athletes, and three softball athletes rated the availability of the training facility as fair. One men’s basketball athlete, one football athlete, and two baseball athletes rated the availability of the training facility as poor. In total, fourteen athletes rated the availability of the training facility as fair, and four

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<sup>33</sup> According to the baseball coach, when trainers come to non-football practices, it is usually just for a portion of the practice, and not for the entire practice.

athletes rated it as poor. Those athletes who explained their selection of the fair or poor rating identified the ratio of one trainer to all athletes as a concern. One baseball athlete noted that football athletes seem to get preferential treatment.

Medical and Training Facilities and Services Summary

OCR reviewed the following factors: (a) availability of medical personnel and assistance; (b) health, accident and injury insurance coverage; (c) availability and quality of training facilities; (d) availability and quality of weight and conditioning facilities; and (e) availability and qualifications of athletic trainers. OCR determined that there were minor differences in the application of these factors among the athletic teams but that the differences did not necessarily favor one sex or the other, and/or were attributable to nondiscriminatory factors (e.g., the unique nature of contact sports, frequency of injuries, and number of participants).

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

In assessing compliance in housing and dining facilities and services, OCR considers the following factors: the equivalence for men and women of the (a) housing and (b) dining facilities and services or other related special services provided for athletes. In making a determination regarding the College’s compliance with respect to this component, OCR reviewed documentation relating to the housing and dining facilities and services provided by the College to athletes in academic year 2014-15. OCR also surveyed coaches, administration, and athletes during the 2014-15 school.

Housing

The College has two on-campus residence options which are open to all qualifying students, Greyhound Hall and Boileau Hall. Greyhound Hall is a traditional dormitory with community bathrooms. Greyhound Hall is an all-male dormitory. Boileau Hall offers two-person room suites with shared bathrooms. Boileau Hall is a co-ed dormitory. None of the on-campus residence options are exclusive to athletes.

Based on information supplied by coaches and athletes, athletes are divided between the two dormitories as follows:

**2014-15 Dormitory Assignments by Sport**

<b>Sport</b>	<b>Dormitory</b>
Men’s Basketball	Greyhound
Football	Mainly Greyhound; Some Boileau
Baseball	Boileau
Women’s Basketball	Boileau
Volleyball	Boileau
Softball	Boileau

As shown above, the athletes from all teams other than men’s basketball and football live in

Boileau Hall; all men's basketball and most football athletes live in Greyhound Hall. Greyhound Hall was built in the 1970's and has three floors, whereas Boileau Hall was built in 2002 and has two floors. OCR's onsite inspection determined there is comparable furniture in the two dormitories, though Boileau Hall furnishings are newer. A few football athletes expressed dissatisfaction with Greyhound Hall, describing it as old and unclean. One athlete cited bugs and another cited mold as issues in Greyhound Hall during the 2014-15 school year. In contrast, overall, athletes reported that Boileau Hall is a nice dormitory.<sup>34</sup> In comparing the two housing options, OCR found Boileau Hall is a nicer dormitory that houses more female than male athletes, creating a slight disparity favoring women's teams. OCR considers whether the disparity is the result of a nondiscriminatory factor. In this case, Greyhound Hall is an all-male dormitory and Boileau Hall is the only co-ed dormitory, requiring placement of all female athletes in Boileau Hall.

The College explained during OCR's onsite visit that Greyhound Hall is cleaned daily by maintenance staff. However, Boileau Hall is cleaned once a week. As Greyhound Hall contains only male athletes, the difference in cleaning schedule is a slight disparity favoring male athletes. OCR considers whether the disparity is the result of a nondiscriminatory factor. As Greyhound Hall is the older of the two dormitories it is reasonable that it requires increased maintenance. In addition, none of the athletes reported any dissatisfaction with the difference in cleaning schedule.

According to College coaching staff, all dormitory room assignments are made by the College's dormitory director. Coaches generally communicate with the dormitory director regarding which athletes to place together as roommates and suite-mates.

During OCR's onsite inspection of the dormitories, OCR noted that male and female athletes receive equivalent special services to each other and to the general student body as part of their housing arrangement. Those services include access to laundry facilities, computer room, TV room, and wireless internet.

According to coach and athlete surveys, housing facilities are open during the pre-season for fall sports and school breaks for those athletes required to be on-campus prior to the beginning of classes or when the College is not officially in session. No coaches or athletes expressed any concern over the housing arrangements made for athletes when the College is not in session. Based on the above, OCR found no evidence of a disparity between the men's and women's athletics programs in the area of housing assignments.

### Dining

According to the surveys of coaches, the College contracts with a food service company to provide dining services on campus. All students have a standard meal plan which provides 19 meals a week (3 meals on Monday through Friday, 2 meals on Saturday and Sunday). There are no special dining facilities or services for athletes, and the meal plan available to all athletes, male and female, is the same plan available to the general student body. OCR found no

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<sup>34</sup> One softball athlete indicated that Boileau Hall could be cleaner.

difference in the types of meal plan options or the adequacy of the meal plans provided to male and female athletes.

All coaches who require their athletes to report to campus prior to the first day of classes and during breaks stated that the cafeteria is open and dining costs are included as part of the athlete's meal plan. However, the cafeteria is closed during the Christmas break. If athletes need to be on campus at that time, payment for dining comes out of the team budget. Reports from athletes were slightly different from the reports from coaches on the issue of dining on campus over breaks. Athletes reported as follows:

- Two baseball athletes, one football athlete, two softball athletes, one volleyball athlete, and two women's basketball athletes stated that the cafeteria supplies food when athletes are on campus over breaks.
- One baseball athlete, seven football athletes, three men's basketball athletes, and one women's basketball athlete stated that the athlete pays for food when athletes are on campus over breaks.

No coaches or athletes expressed any concern over the dining arrangements made for athletes when the College is not in session.

Coaches uniformly stated that pre-game meals are supplied by the cafeteria. OCR found no disparity in the College's provision of pre-game meals to the men's and women's athletic program.

#### *Housing and Dining Facilities and Services Summary*

The College provides no special housing facilities and related services to athletes. Athletes are housed in the same facilities as the general student body. All teams requiring housing when the College was not regularly in session had equal access to on-campus residential facilities. According to coach surveys, any fee for such housing was paid from the applicable team's budget.

With regard to dining services provided to athletes, OCR determined there was no difference in the types of meal plan options or the adequacy of the meal plans provided to male and female athletes. Accordingly, OCR concludes that the evidence is insufficient to establish that the University failed to provide equal opportunities to students of both sexes with respect to the provision of housing and dining facilities and services.

#### **9. Publicity - 34 C.F.R. § 106.41(c)(10)**<sup>35</sup>

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

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<sup>35</sup> The complainant alleged unequal treatment in this program component as men's teams receive game announcers and score keepers but women's teams do not.

women's programs.

*Sports Information Personnel and the Services Provided*

There are no written policies or procedures for providing sports information services to men's and women's intercollegiate athletic teams at the College. During the 2014-15 school year, the volleyball coach acted as sports information director (SID). According to the College's response, as confirmed by the coaches' surveys, the SID keeps the athletic department's website up to date by posting articles other coaches send her, posting team schedules, and attending all home games and posting scores immediately following games/matches. Each coach is responsible for writing articles for submission to the SID. The SID reported she spends 30-40% of her time on her duties as SID. When asked to rate the availability of the SID, all coaches provided ratings of adequate or excellent.

Coaches indicated that in addition to the SID, during the 2014-15 school year there was a public relations (PR) director. OCR interviewed the PR director who stated that his primary role was to promote the College as a whole; he was not specifically tasked with doing PR work for the sports teams but he worked with the SID to make sure all sports received coverage. For example, during the fall season, when the SID/volleyball coach's team was in season, the PR director covered the other in-season sport, football, to relieve some of the pressure on the SID.

Throughout the year, he suggested ideas for articles or PR projects to the SID, and at times she would work on them, and at times she would ask him to assume the project. The PR director handled photography for all of the sports teams. He attended all of the football games,  $\frac{2}{3}$  to  $\frac{3}{4}$  of the volleyball and women's and men's basketball games, and about  $\frac{1}{4}$  of baseball and softball games. The PR director told OCR that football has the fewest games, and therefore he was able to attend most of their games; he attended the smallest number of baseball and softball games because they were played during business hours when he had other professional responsibilities.<sup>36</sup> The PR director stated he uploaded photos he took to social media. Particularly good photos he would send to the local paper and/or share with the SID for further dissemination. Occasionally, if an athlete from any team received an honor or award, he would send a picture to the local newspaper in the athlete's hometown.

Based on OCR's interview with the PR director, OCR noted the PR director covered football more often than any other sport. OCR found the PR director articulated legitimate, non-discriminatory reason for offering more services to football than any other sport – namely, both football and volleyball have the same competitive season, and the SID needed to focus on her role as volleyball coach during football's season; therefore, the PR director ensured football received publicity.

Coaches surveyed by OCR were asked to rate the quality of sports information personnel provided to their respective teams on a scale of excellent, adequate, fair or poor. When different coaches on the same team gave different ratings, both ratings are included in the chart below:

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<sup>36</sup> Consistent with the PR director's interview, the baseball coach stated in his survey that the PR director rarely came to games and stayed for a very short time on the occasions that he did come.

**Quality of Sports Information Personnel**

Sport	Rating
Men’s Basketball	Poor
Football	Adequate
Baseball	Adequate; Poor
Women’s Basketball	Excellent
Volleyball	Adequate; Poor
Softball	Adequate; Poor

The coaches who assessed the quality of sports information personnel as poor explained that: the SID is just one person and she is stretched too thin, there is a lack of adequate personnel necessary to do the job well, there is no funding provided by the College to hire help for the SID and the coaching staff need to write publicity articles and the PR staff does not assist with that task.

Other Publicity Resources

According to the College’s response, the athletic department maintains a Twitter account. Several sports additionally maintain their own Facebook and/or Twitter accounts. The College’s response also indicated that men’s and women’s home conference basketball games and all football games are broadcast on local radio (KOMB) and on Fort Scott TV. The athletic department pays for the radio and TV broadcasts. Athlete survey responses differed from the College’s response on this point, stating that football games were rarely broadcast on the radio or television. Based on the College’s response and athlete surveys, Twitter, Facebook, radio and TV publicity are summarized by team in the chart below:

**2014-15 Non-Print Publicity Resources by Sport**

Sport	Twitter <sup>37</sup>	Facebook <sup>2</sup> <sub>6</sub>	Radio	TV
Men’s Basketball	Yes	No	Yes – conference games	Yes – home conference games
Football	Yes	No	Yes – all games	Yes – all games
Baseball	Yes	Yes	No	No
Women’s Basketball	No	Yes	Yes – conference games	Yes – home conference games
Volleyball	No	Yes	No	No
Softball	Yes	Yes	No	No

The radio and TV coverage provided to the football team and the men’s and women’s basketball teams creates a disparity favoring the men’s program. When a disparity is identified, OCR considers whether the disparity is the result of a nondiscriminatory factor. The College indicated

<sup>37</sup> OCR obtained the information in this column through athlete surveys and a basic internet search to locate the Twitter and/or Facebook page.

the local radio station does not want to broadcast all sports, and lacks sufficient staff to cover all sporting events. The College continues to negotiate with the local radio station to obtain broader coverage of the College’s sports teams.

With regard to social media, more men’s teams have Twitter accounts, however more women’s teams have Facebook accounts. There is therefore no disparity created. In addition, each team has the option to open a Twitter or Facebook account, so if a team does not have an account, it is by choice.

The College provided OCR a sample of all the 2014-15 printed publicity for each men’s and women’s athletic team. Only three teams – men’s basketball, football and women’s basketball - had a team poster containing the 2014-15 season schedule. The football team’s poster was substantially larger than the other two teams. Men’s basketball had a six page recruitment booklet and football had recruitment fliers and postcards. The football team had a 68 page media guide. The print material for the baseball and volleyball team related to various fundraisers conducted by the respective teams. Below is a chart summarizing the printed publicity materials the College supplied to OCR as part of its institutional response:

**2014-15 Printed Publicity Resources by Sport**

Sport	Printed Publicity Materials Supplied to OCR
Men’s Basketball	<ul style="list-style-type: none"> <li>▪ Pamphlet re: boys basketball camp</li> <li>▪ 8.5 x 11 game schedule (color, glossy)</li> <li>▪ 18 x 12 14-15 team poster with schedule (color, glossy)</li> <li>▪ 18 x 12 championship poster (color, glossy)</li> <li>▪ 8.5 x 11 recruitment booklet – 6 double sided color pages, stapled in the corner</li> <li>▪ 8.5 x 11 last season review flier</li> <li>▪ 8.5 x 11 4 page pamphlet re: 4<sup>th</sup> Annual Greyhound Classic (shared with women’s basketball team)</li> <li>▪ 8.5 x 11 4 page pamphlet re: All Star Game (shared with women’s basketball team)</li> </ul>
Football	<ul style="list-style-type: none"> <li>▪ 68 page media guide</li> <li>▪ 3ft x 2ft team poster with schedule</li> <li>▪ 18 page game day pamphlet</li> <li>▪ 8.5 x 11 recruitment poster (color, glossy)</li> <li>▪ 4 x 6 recruitment postcards</li> <li>▪ 2 x 8.5 fundraising cards (free poster for donation)</li> <li>▪ 8.5 x 11 team application</li> <li>▪ Small pamphlet re: youth camp</li> <li>▪ Pamphlet re: Train2Win program</li> </ul>
Baseball	<ul style="list-style-type: none"> <li>▪ Fundraising calendar – 12 months, 13 pages – color cover only</li> <li>▪ 5 x 7 holiday card for sponsors (glossy paper, color)</li> <li>▪ 8.5 x 11 Hit-a-Thon donation request letter (regular paper)</li> <li>▪ 8.5 x 11 2014 baseball spring report (glossy, cardstock, color on one side)</li> </ul>

Sport	Printed Publicity Materials Supplied to OCR
Women's Basketball	<ul style="list-style-type: none"> <li>▪ 5 x 7 community night ad (color, glossy)</li> <li>▪ 8 x 10 14-15 game schedule, folded in half (front and back color)</li> <li>▪ 8.5 x 11 basketball camp registration form (color)</li> <li>▪ 18 x 12 14-15 schedule poster (color, glossy)</li> <li>▪ 8.5 x 11 4 page pamphlet re 4<sup>th</sup> Annual Greyhound Classic (shared with men's basketball team)</li> <li>▪ 8.5 x 11 4 page pamphlet re All Star Game (shared with men's basketball team)</li> </ul>
Volleyball	<ul style="list-style-type: none"> <li>▪ 18 x 12 5K color jam run poster – fundraising (color, glossy)</li> <li>▪ 2 x 4 color jam ads – printed on 8.5 x 11 cardstock (color)</li> <li>▪ 4 x 6 postcards – thank sponsors</li> <li>▪ 18 x 11 poster of athlete 2</li> <li>▪ 18 x 11 poster of athlete 10</li> </ul>
Softball	<ul style="list-style-type: none"> <li>▪ Pamphlet with team roster (8.5 x 11 folded in half)</li> <li>▪ 8.5 x 11 flier re softball's web presence</li> <li>▪ 8.5 x 11 flier re goals and requirements of softball program</li> </ul>

In comparing the print publicity material provided to men's and women's teams by the College during the 2014-15 school year, overall, football, men's basketball, and women's basketball teams had additional and superior printed materials.

*Quality and Quantity of Publications and Other Promotional Devices*

Coaches surveyed by OCR rated the quantity and type of publicity resources, publications, and other promotional devices provided to their respective teams on a scale of excellent, adequate, fair or poor. Six coaches<sup>38</sup> rated the quantity and type of the publicity provided to them as poor; the remainder rated this as adequate. When surveyed about the quality of the publicity resources provided to them, four<sup>39</sup> coaches rated the quality as poor, and the remainder rated quality as adequate. The coaches made the following comments regarding quantity and quality of the publicity resources provided to them by the College:

- Men's Basketball: Not a lot of publicity being done for sports.
- Baseball: We have to make our own materials and do the best we can. Our games are never on the radio or the TV. The public relations director did not take pictures or write articles about our team.
- Football: Our website is poorly maintained.
- Volleyball: No publicity resources are provided to our team.
- Softball: No publicity resources are provided to our team.
- Women's Basketball did not note any comments or concerns.

<sup>38</sup> Two baseball coaches, one football coach, one softball coach, one women's basketball coach, and one volleyball coach gave the poor rating.

<sup>39</sup> One baseball coach, one basketball coach, one softball coach, and one volleyball coach gave the poor rating.

On athlete surveys, one baseball athlete, three football athletes, one women's basketball athlete, and one men's basketball athlete rated the quality of publicity provided to their respective teams as poor. Only one athlete explained his rating, noting that his team was not supplied with any publicity from the College. Twenty-four athletes representing all of the College's intercollegiate teams rated the quality of publicity provided to their respective teams as fair. None of the athletes provided an explanation for the fair rating.

OCR examined whether men's and women's teams had equivalent access to game day personnel. The College stated football, volleyball and men's and women's basketball all receive college-funded game day personnel, as they charge admission to their games. In contrast, baseball and softball do not get college-funded game day personnel as they do not charge admission and they require fewer game day personnel. In coaches surveys, baseball, softball and women's basketball coaches indicated that they keep their own scores and statistics at team games. The football coach indicated that a member of the community often keeps their statistics. The volleyball coach stated that the team hires outside game management personnel for home games who do those tasks.

There was not a disparity between men's and women's teams regarding access to or assistance from the SID. Based on coach surveys and the College's institutional response, there was no significant disparity between men's and women's teams access to the SID and PR director.

#### Publicity Summary

There were substantial differences in the publicity services provided to the men's and women's athletics teams at home and away events during the 2014-15 school year. Overall there was a disparity favoring men's teams.

During OCR's interview with the College's 2014-15 sports information director, he articulated a legitimate, non-discriminatory reason to explain why he covered football more than any other sport. In order to determine whether the proffered reason is in fact a pretext for discrimination, OCR would need to re-interview the sports information director to confirm his position.

In addition, OCR reviewed the print publicity for the 2014-15 school year that the College provided to each team. OCR identified disparities in the number and quality of printed materials provided to each team, with a disparity favoring men's teams. Before OCR could determine whether there was a legitimate, non-discriminatory reason to explain the disparity, the College asked to resolve this matter via a 302 resolution agreement.

As there remain areas to investigate, but the College requested and is willing to resolve potential concerns, OCR determined it is appropriate to use the 302 resolution process to resolve the remaining concerns within this component.

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

In assessing compliance in provision of support services, OCR considered the equivalence for

men’s and women’s teams regarding the amount of administrative, secretarial, and clerical assistance received, and the availability of office space, equipment and supplies, and other support services.

Administrative, Secretarial, and Clerical Assistance Received

The athletic director told OCR he reports to the President of the College and is responsible for the College’s athletics program, including overseeing academics, eligibility, scholarships, and mentoring programs. His other administrative responsibilities include overseeing coaches and staff; strategic planning; acting as a liaison between the athletics department and faculty and administration; acting as a community liaison; and overseeing operations, sponsorships, budgeting, websites, social media, communications, and major fundraising.

The athletic director is supported by an administrative assistant who is responsible for providing administrative, secretarial, and clerical support to the athletic director and selective support to the sports teams at the College. The administrative assistant specified that she is assigned to support all men’s and women’s athletic teams. She performs the same duties for every athletic team. Her duties include completing eligibility forms, completing purchase orders, double checking that supplies are received, making deposits and writing checks on fundraising accounts, writing letters of intent for scholarships, completing all NJCAA compliance paperwork, and answering a few telephone calls which come through her telephone number. The administrative assistant stated she does not give priority to any team; teams are served on a first come, first served basis.

According to coach surveys, the volleyball coach handles the scheduling of the weight room, the gym, the turf field, and the study hall room. All other administrative tasks, including but not limited to budgeting, ordering, planning, travel arrangements and scheduling, are handled by the coaches and assistant coaches themselves. There is no additional support provided to any one team; all teams have equal access to the athletic director and administrative assistant for support. The College is providing administrative services that are equivalent for the men’s and women’s athletic programs.

Availability of Office Space, Equipment and Supplies

According to the College’s response and surveys of coaches, coach offices are located in two different buildings. Football coaches’ offices are located in Dick Hedges Administration Building; all other coaches’ offices are located in Arnold Arena. All head coaches had private, single occupant offices. Other than the football team, teams with more than one assistant coach have one office that is shared by all assistant coaches. The football team has five offices for six assistant coaches. There is a disparity favoring male teams in allocation of private and shared offices among coaches.

According to the College’s response and OCR’s onsite visit, the coach offices vary in size in accordance to the chart below:

**2014-15 Coach Office Sizes**

<b>Sport</b>	<b>Head Coach Office Size</b>			<b>Assistant Coach Office Size</b>		
Men’s Basketball	8’11	x	16’9	8’11	x	12’11

Sport	Head Coach Office Size	Assistant Coach Office Size
Football	10'0 x 28'0	8'9 x 9'7
		8'10 x 9'7
		8'10 x 9'7
		8'10 x 9'7
		10' <sup>40</sup> x 15'6
Baseball	10'4 x 13'1	7'4 x 13'0
Women's Basketball	8'11 x 11'0	7'10 x 15'0
Volleyball	8'9 x 12'0	8'9 x 11'0
Softball	8'10 x 11'0	8'9 x 11'0

Men's head coach offices are larger than women's head coach offices. The football coach's office is substantially larger than any other coach's office. Overall, there was a disparity in head coach office size favoring male teams.

Assistant coach's offices for volleyball, softball, and baseball are comparably sized. Four of the assistant football coaches' offices are slightly smaller than the volleyball, softball and baseball assistant coaches' offices; however, one assistant football coach's office (the defensive coordinator) is significantly larger than any other assistant coach office.<sup>41</sup> Men's and women's basketball assistant coach offices are larger than all assistant coach offices, except the defensive coordinator's office.

The slightly smaller football assistant coaches' offices are offset by the significantly larger football assistant coach office. Not including football, where the varying office sizes offset each other, OCR found that men's teams have one larger than average assistant coach office, and women's teams have one larger than average assistant coach office. There was not a disparity favoring men's or women's teams in general assistant coach office size.

OCR compared the assistant coach offices of comparable sports: the men's basketball assistant coach office is smaller than the women's basketball assistant coach office; the softball and baseball offices are configured differently but are fairly comparably sized. Within comparable sports, OCR found a slight disparity favoring women.

Overall, there was a disparity favoring men's teams in head coach office size and a slight disparity favoring women's teams in comparing assistant coach office size of comparable sports. The disparity favoring men's teams in head coach office size is more substantial in that it affects every women's team head coach, whereas the disparity favoring women's teams in comparable sports affects only the men's basketball assistant coaches. The disparities do not offset each other, and the disparity favoring men in coach office size is of greater significance.

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<sup>40</sup> This office is not a perfect rectangle. Its shape is similar to this: . The slanted wall measures 6'2, the top measures 4'6, and the right measures 12'8.

<sup>41</sup> The large assistant football coach office exceeds the size of all head coach offices except football.

During OCR's onsite visit, OCR observed outside of the football coach offices, there is an open space that is furnished with a microwave, kitchen sink and cabinets, full size refrigerator, shelf unit with 5 shelves, printer, copier, scanner, desk, trophy case, trophy shelf, computer, and file cabinet with 4 drawers. None of the other offices have a comparable space. This is a disparity favoring men's teams.

During OCR's onsite visit, OCR observed that all coach and head coach offices are furnished with basic office furniture. There is some variation in material and size. On the coach surveys, one men's coach noted that the football coach office furniture is newer and higher quality than the other coach offices. Based on the College's institutional response, football is also the only sport whose coach has a conference table and chairs in his office. The College explained that all the sports whose offices are in Arnold Arena utilize a separate conference area in that building; since football is in a separate building without a nearby conference room the coach needs the ability to conference with his assistants and others within his office.

All of the coaches confirmed they had access to office equipment including printers, copiers, fax machines, phones and computers. None of the coaches reported any unmet needs for office equipment. During OCR's onsite visit, OCR confirmed that all coaches in the College's men's and women's athletics program have landlines in their offices, a computer and monitor, and access to office equipment including printers, copiers, and scanners. The College does not supply any coaches with cell phones. Overall, the College is providing equivalent office equipment and supplies for the men's and women's athletic programs.

#### Support Services Summary

OCR determined the College is providing administrative support services that are equivalent for the men's and women's athletic programs, in that all teams share the same administrative assistant. The College is providing equivalent office equipment and supplies for the men's and women's athletic programs.

There is a disparity favoring men's teams in allocation of private and shared offices among coaches, as all teams are allocated one office for all assistant coaches except football; football has five assistant coach offices. There is also a disparity in head coach office size favoring male teams. Within comparable sports, there is a slight disparity favoring women, as the women's basketball coach's office is slightly larger than the men's basketball coach's office. There is a disparity favoring male teams in that no team other than football has a furnished common space outside of coaches' offices.

The College stated that disparities favoring football are due to the fact that football is the only team whose offices are not in Arnold Arena, and therefore there is more space is available. The College also stated the football team itself refinished its current space. To complete the investigation of this component, OCR would have to investigate further to ascertain whether other teams were offered space outside of Arnold Arena, how it was decided that the football coaches would receive that space, and request additional information on the total amount spent and the source of the funds utilized to refinish the space utilized by the football coaches.

As there remain issues to investigate, but the College requested and is willing to resolve potential concerns, OCR determined it is appropriate to use the 302 resolution process to resolve the remaining concerns within this component.

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

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

*Opportunities to Recruit:*

All head and assistant coaches reported that they participate in recruiting for their respective teams. Coaches for each men’s and women’s athletic team reported the number of recruiting trips taken during the 2014-15 school year. For the purpose of determining how many recruiting trips were made on behalf of each team, OCR counted all day trips as one recruiting trip. When a coach or assistant coach traveled for recruiting purposes for several consecutive days including overnight stays, OCR determined the number of recruiting trips by counting the number of cities the coach identified as recruiting locations. A trip to a single major metropolitan area for several consecutive days including overnight stays, however, counted as one recruiting trip even when the coach visited several suburban towns in the metropolitan area. Following are the numbers of recruiting trips taken on behalf of each men’s and women’s team:

**2014-15 Recruiting Trips by Sport**

<b>Sport</b>	<b># of Recruiting Trips</b>
Men’s Basketball	16
Football	57 <sup>42</sup>
Baseball	24
Women’s Basketball	60
Volleyball	24
Softball	14
	195

During the 2014-15 school year, there were a total of 195 reported recruitment trips taken by

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<sup>42</sup> This number does not include trips made by two Assistant Coaches. The College did not have the recruiting trip data for those coaches. OCR spoke with one of the coaches, who stated he made many recruiting trips in the local metropolitan area. He no longer has his calendar from that time and since he did not need a school vehicle or require reimbursements from the College, he had no way of re-creating his schedule for OCR. OCR tried to reach the other coach via email and telephone, however, the coach did not respond to OCR’s attempts at communication.

men’s and women’s coaches. Of significance, the College indicated the recruiting schedules for two assistant football coaches were unreported and unknown; therefore, the number of recruiting trips for football is presumed significantly higher than what is listed above. Without the recruiting data for two out of the six football coaches, OCR is unable to accurately compare the number of recruiting trips taken by coaches of men’s and women’s teams to the participation rates of men and women in the College’s intercollegiate athletics program.

According to the College’s institutional response, most athletes are recruited from Kansas, Missouri, and Oklahoma. During the 2014-15 school year, coaches for three teams made recruiting trips outside the regional area described above, as follows:

- The **women’s basketball** coach made recruiting trips to California and Iowa.
- The **football** coaches made recruiting trips to Texas, Louisiana, Georgia, Florida, South Carolina, and Tennessee.
- The **baseball** coach made recruiting trips to Texas and Arkansas.

Many coaches reported that they are seeking the best athletes and look nationally, within budgetary constraints, for proper recruits. According to the baseball coach, most recruits come from places where the coaches have trusted contacts.

The coaches surveyed by OCR indicated that the time they spend on recruiting varies throughout the year. None of the coaches indicated any concern regarding the adequacy of time to identify prospects, contact and communicate with prospects, and/or make recruiting trips to the locations of their choice.

*Financial and Other Resources*

According to the College’s response, each men’s and women’s athletic team receives a budget for recruiting. The athletic director explained that the budget is calculated based on the number of scholarships a team receives. Following is the recruitment budget allocated to each men’s and women’s team, based on the College’s data response.

**2014-15 Recruitment Budget by Team**

<b>Sport</b>	<b>Recruiting Budget</b>	<b>Size of Squad</b>
Men’s Basketball	\$5,038	11 (7.6%)
Football	\$12,296	61 (42.4%)
Baseball	\$2,594	26 (18.1%)
<b>Subtotal:</b>	<b>\$19,928.00 (79.7%)</b>	<b>98 (68.1%)</b>
Women’s Basketball	\$4,000	11 (7.6%)
Volleyball	\$465	13 (9.0%)
Softball	\$624.83	22 (15.3%)
<b>Subtotal:</b>	<b>\$5,089.83 (20.3%)</b>	<b>46 (31.9%)</b>
<b>Total:</b>	<b>\$25,017.83 (100%)</b>	<b>144 (100%)</b>

The total recruitment budget for men's teams is \$19,928, comprising 79.7% of the total funds allocated by the College for recruitment. The total recruitment budget for women's teams is \$5,089.83, comprising 20.3% of the total funds allocated by the College for recruitment. When the recruitment budget is compared to the athlete participation rate, OCR found an 11.6% disparity favoring men's teams. The College's position is that coaches control their own overall budgets, and decide how much they want to allocate to recruitment.

OCR compared the recruitment budget of men's basketball and women's basketball, and noted a disparity favoring men's teams. OCR also compared the recruitment budgets of baseball and softball, and again noted a disparity favoring men's teams. OCR noted that while basketball recruits for the same amount of athletes, baseball recruited for 26 positions and softball recruited for 22 positions. However, OCR also noted that baseball's budget is more than four times greater than softball's budget. Overall, OCR found the disparity favoring men's teams in comparable sports is not offset by any other factor.

OCR surveyed coaches about the sufficiency of their respective recruitment budgets. Coaches from all sports other than women's basketball indicated that their budgets are insufficient. The volleyball coach stated her budget does not even cover the gas for the team's recruitment trips. Similarly, the baseball coach stated that an increased budget is necessary to cover basic travel and lodging costs for recruitment, noting that his team went over budget three years in a row. The softball coach stated more funds are necessary for her to recruit from a larger geographic region. The men's basketball team coach stated generally that the current budget does not allow his team to compete recruiting-wise with other schools.

Generally, coaches of all men's and women's teams reported using a variety of methods to recruit prospective athletes. Coaches for all men's and women's teams told OCR they identify and contact prospects using online recruiting databases, telephone, written correspondence, email, and social media. Some coaches reported attending showcases and making school or home visits to prospective athletes. None of the coaches reported receiving any clerical or administrative support to assist them with recruiting activities.

Coaches uniformly stated that potential recruits' visits to the College are not funded by the College – all costs including travel and lodging are borne by the potential recruit. According to the College's response, coaches used College vehicles, personal vehicles with a College gas card, or personal vehicles with coach-funded gas for local recruitment. The response also indicates that coaches who traveled by air reimbursed themselves for expenses from their team's travel budget.

With the exception of two football athletes and one women's basketball athlete, all athletes responding to OCR's survey about their experience in the College's intercollegiate athletics program confirmed that they were recruited by one or more coaches using a variety of methods. Most indicated at least one coach came to watch them compete a minimum of one time during their recruitment. Most athletes also indicated that they visited the campus at least once, but the visit was not funded by the College.

*Benefits, Opportunities, and Treatment of Prospective Athletes*

According to the coaches, during the 2014-15 school year potential recruits' visits to the College were not funded by the College. Some athletes<sup>43</sup> indicated they or their families were given benefits during the recruitment process, as summarized in the chart below.

#### Benefits Afforded to Potential Recruits

Team	Women's Basketball	Volleyball	Softball	Men's Basketball	Football	Baseball
Meals (on-campus, recruit)	1	2	2	0	11	0
Meals (off-campus, recruit)	0	0	0	0	1	0
Meals (on-campus, parents)	3	2	2	0	3	0
Meals (off-campus, parents)	0	0	0	0	1	0
Lodging (on-campus, recruit)	0	1	0	0	1	0
Transportation (recruit)	0	1	0	0	1	0
Transportation (parents)	0	0	0	0	3	0
Entertainment (recruit)	1	0	1	0	1	0
Entertainment (family)	0	1	0	0	1	0

The women's basketball, volleyball, softball, and football teams provided a number of potential recruits with meals. The football and volleyball teams each provided one recruit with on-campus lodging and transportation. The football team provided three parents with transportation. The women's basketball, softball, and football teams provided one recruit with entertainment. The volleyball and football teams provided one family with entertainment. The men's basketball and baseball teams did not provide any of the above. Overall, the benefits provided to potential recruits varied among men's and women's teams, however the disparity was not significant.

#### Recruitment of Athletes Summary

Coaches or other professional athletic personnel in the College's programs serving male and female athletes are provided with substantially equal opportunities to recruit, except that there is a significant disparity favoring men's teams in the recruitment budgets made available for each of the College's men's and women's teams.

In addition, the College did not supply recruiting trip data for two football assistant coaches. Without that recruiting data, OCR is unable to accurately compare the number of recruiting trips

<sup>43</sup> It is important to note that not all athletes answered OCR's survey; this chart summarizes the responses from those athletes who answered OCR's survey.

taken by coaches of men's and women's teams to the participation rates of men and women in the College's intercollegiate athletics program. To complete the investigation of this component, OCR would require the College to search old emails, records, etc. to reconstruct the recruitment trip data missing for the two coaches. As there remain issues to investigate, but the College requested and is willing to resolve the above concerns, OCR determined it is appropriate to use the 302 resolution process to resolve the concerns within this component.

### **Conclusion**

When conducting its analysis, OCR first evaluates each factor within each program component and analyzes information under each of the factors for a particular component. OCR will determine for each factor whether the benefits or services provided favor the men's program, favor the women's program, or are the same, or if different have a negative effect on students of one sex. Once each of the factors within a program component has been analyzed, OCR then makes a determination for that program component. If the same or similar benefits or services are provided for all students, then there are no differences that negatively affect students of one sex, or that result in a disparity. For factors favoring each sex to offset each other, they need to have the same relative impact within the particular program component. Disparities need not necessarily be equal in number to offset each other. Where factors favor students of one sex and are not offset by the services or benefits provided to students of the other sex under other factors, then a disparity exists for the program component. Once the determination has been made for each program component, OCR then analyzes all of the program components together to determine if there is compliance with the Title IX regulation. OCR considers the number and significance of disparities in the program components and compares the disparities to determine if these disparities offset each other.

Before OCR completed its investigation, the College expressed interest in resolving the following Title IX athletics components through a resolution agreement: athletic financial assistance; travel and per diem; the opportunity to receive coaching and the compensation of coaches; the provision of publicity; the provision of support services; and the recruitment of athletes.

OCR determined that the preponderance of the evidence supported a conclusion that the College failed to comply with the Title IX regulations for the following Title IX athletics components: the accommodation of athletic interests and abilities and locker rooms, and practice and competitive facilities. OCR is resolving these components pursuant to Section 303(b) of the CPM because there is sufficient evidence to support a conclusion of noncompliance.

OCR determined that the preponderance of the evidence did not support finding that the College failed to comply with the Title IX regulations for the following Title IX athletics components: equipment and supplies; scheduling of games and practice times; opportunity to receive academic tutoring and assignment and compensation of tutors; medical and training facilities and services; and housing and dining. OCR is closing these components pursuant to Section 303(a) of the CPM because there is insufficient evidence to support a conclusion of noncompliance.

On September 30, 2016, the College agreed to implement the enclosed 302/303(b) Agreement,

which addresses all identified compliance concerns and violations. OCR will monitor the implementation of the Agreement.

As noted above, the College has agreed to provide data and other information during OCR's monitoring of the Agreement and OCR may conduct additional visits and request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.37(c) and § 106.41.

OCR will not close the monitoring of the Agreement until it has determined that the College has complied with the terms of the Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.37(c) and § 106.41, which were at issue in this complaint. Should the College fail to fully implement the Agreement and to provide data to OCR in order for OCR to determine compliance with the Agreement, as well as the Title IX requirements relating to the above specified areas in which the College is found out of compliance, OCR will take appropriate action to ensure the College's compliance with Title IX.

OCR wishes to recognize the professionalism and cooperation shown by the College at all stages of this investigation.

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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this should occur, he or she may file a separate complaint alleging such harassment or intimidation.

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

If you have any questions regarding OCR's determination, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice), (877) 521-2172 (telecommunications device for the deaf), or XXXXX.XXXXX@ed.gov; or XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice), (877) 521-2172 (telecommunications device for the deaf), or XXXXX.XXXXX@ed.gov..

Sincerely,

/s/ Maria North

Maria L. North  
Supervisory Attorney

Enclosure: Resolution Agreement