



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 16, 2017

XXXXX, XXXXXXXXXX
Nebraska State College System
1327 H. Street, Suite 200
Lincoln, Nebraska 68506

Re: Docket # 07102096

Dear Ms. XXXXXX:

This is to notify you of the disposition of the above-referenced complaint against Wayne State College (College), Wayne, Nebraska, which was filed on September 1, 2010, with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The Complainant filed this complaint alleging discrimination on the basis of sex in the operation of the College's intercollegiate athletic program.

Specifically, the complaint alleged the College operates an intercollegiate athletic program that fails to provide benefits, opportunities, and services to female athletes that are equivalent to those provided to male athletes in the following program components:

1. Athletic financial assistance;
2. Accommodation of interests and abilities;
3. Equipment and supplies;
4. Scheduling of games and practice times;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Travel and per diem allowance;
8. Provision of locker rooms, practice and competitive facilities;
9. Provision of medical and training facilities and services;
10. Provision of housing and dining facilities and services;
11. Support services;
12. Publicity; and
13. Recruitment.

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 any program

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

or activity receiving Federal financial assistance from the Department. Because the College receives Federal financial assistance from the Department, OCR has jurisdiction over the College under Title IX.

During the investigation, OCR reviewed documentation submitted by the College. OCR also surveyed several members of the athletics department, including the College's Athletics Director and the head coaches for all men and women's sports programs, as well as several student-athletes from each program, and conducted an on-site inspection of the College's practice and competitive facilities and locker rooms.

A "mixed resolution" is appropriate for complaints with multiple allegations and issues, where the investigation thus far has found a violation with regard to some allegations and issues and/or insufficient evidence with regard to other allegations and issues, and/or where there are some allegations and issues that are appropriate to resolve prior to the conclusion of the investigation. The letter that OCR issues in such a "mixed resolution" case must state the allegations and issues for which OCR has made findings (either non-compliance or insufficient evidence), state OCR's findings and the basis therefore, and state the allegations and issues that are being resolved prior to the conclusion of the investigation.

OCR determined the College was in non-compliance regarding the accommodation of athletic interests and abilities and the notice of nondiscrimination. OCR also determined there was insufficient evidence to establish a violation regarding the scheduling of games and practice times, travel and per diem allowance, the opportunity to receive academic tutoring and the assignment and compensation of tutors, the provision of housing and dining, publicity, support services, and recruitment. Before the conclusion of OCR's investigation, the College requested to resolve athletic financial assistance; equipment and supplies; the opportunity to receive coaching and the assignment and compensation of coaches; locker room, practice and competitive facilities; and medical and training facilities and services. The enclosed Resolution Agreement (Agreement), when implemented, will resolve the non-compliance areas and the areas the College requested to resolve before the conclusion of OCR's investigation. We set forth below the applicable regulatory requirements, a summary of OCR's investigation to date, and a summary of the resolution.

Applicable Legal and Policy Standards

The Title IX regulation, at 34 C.F.R. § 106.41, prohibits discrimination in athletics, and 34 C.F.R. § 106.37(c) separately requires that athletic scholarships be available to members of each sex in proportion to the number of students participating in athletics. Additionally, OCR has multiple policy documents interpreting this provision, including but not limited to, the Intercollegiate Athletic Policy Interpretation (Policy Interpretation) issued December 11, 1979 (44 Fed. Reg. 71413 *et seq.* (1979)) and the January 16, 1996 Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test and Dear Colleague Letter.

Background

The College is located in Wayne, Nebraska. According to the College, its full-time undergraduate student enrollment for the 2014-15 school year was 2,693 students: 1,529 (56.8%) were female and 1,164 (43.2%) were male. In 2014-15, the College offered five intercollegiate men's sports: baseball, football, basketball, cross country, and track and field. The College offered six intercollegiate women's sports: softball, volleyball, soccer, basketball, cross country, and track and field. During the 2014-15 school year, the College competed at the Division II level as a member of the National Collegiate Athletic Association (NCAA) and the Northern Sun Intercollegiate Conference (NSIC) which the College joined in 1998. The NSIC is comprised of sixteen institutions.

Athletic Financial Assistance - 34 C.F.R. § 106.37(c)

The Title IX regulation, at 34 C.F.R. §106.37(c), requires a university to provide reasonable opportunities for athletic scholarship awards for members of each sex in proportion to the number of students of each sex participating in its intercollegiate athletics program. The Policy Interpretation provides that OCR will examine compliance primarily by means of a financial comparison to determine whether the total amounts of financial assistance (scholarship aid) available to men's and women's athletic programs is substantially proportionate to their respective participation rates. To assess this, OCR divides the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and compares the results. The analysis is conducted on a case-by-case basis, but institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments that take into account legitimate, nondiscriminatory factors (such as differences in in-state vs. out-of-state tuition at public institutions, as long as out-of-state scholarships are not disproportionately limited to one sex; or reasonable professional decisions concerning awards necessary for program development) that the institution can demonstrate are reasonable and do not reflect underlying discrimination.

After taking into account any legitimate, nondiscriminatory explanations demonstrated by the institution, if there is an unexplained disparity in the athletic financial assistance budget favoring either sex, OCR will presume that such disparity is reasonable and based on legitimate and nondiscriminatory reasons if: 1) the disparity is one percent or less for the entire athletic scholarship budget; or 2) the disparity is greater than one percent, but no greater than the value of one full scholarship. For example, if men are 60 percent of the athletes, OCR would expect that the men's athletic scholarship budget would be within 59 to 61 percent of the total budget for athletic scholarships for all athletes. For those colleges or universities where one percent of the entire athletic scholarship is less than the value of one full scholarship, OCR will presume that a disparity up to the value of one full scholarship is equitable and nondiscriminatory. However, even if an institution consistently has a less than one percent disparity, the presumption of compliance with the Title IX regulation might still be rebutted if there is direct evidence of discriminatory intent.

OCR reviewed the unduplicated participation rates for student athletes. During the 2014-2015 academic year, the College reported athletic participation rates of 110 female athletes and 169

male athletes, a total of 279 athletes. Therefore, for 2014-15, 39.4 percent of the athletes were female, and 60.6 percent of the athletes were male. Female athletes were awarded \$295,984.25 of the \$807,303.75 athletic financial assistance or 36.7 percent. A disparity of one percent or less is presumed reasonable. OCR's preliminary investigation found the difference to be 2.7 percentage points. Prior to the conclusion of OCR's investigation, the College requested to voluntarily resolve this compliance concern. The attached Agreement, when implemented, will resolve this concern.

Accommodation of Athletic Interest and Abilities - 34 C.F.R. § 106.41(c)(1)

The Title IX regulation requires institutions to effectively accommodate the athletic interests and abilities of students to the extent necessary to provide equal opportunity in the selection of sports and the levels of competition available to members of both sexes. In effectively accommodating the interests and abilities of male and female students, institutions receiving Federal financial assistance must provide the opportunity for individuals of each sex to participate in intercollegiate competition and to have competitive team schedules that equally reflect their abilities. To determine compliance with this component area, OCR examined whether the selection of sports and levels of competition in the intercollegiate athletics program at the College effectively accommodated the interests and abilities of members of both sexes. In making this determination, OCR considers the total number of athletic participation opportunities for male and female students. For example, if a student participates in two sports that student will be counted twice.

The Department's 1979 "Intercollegiate Athletics Policy Interpretation" (1979 Policy Interpretation),¹ published on December 11, 1979, sets out a three-part test that OCR uses as part of determining whether an institution is meeting its Title IX obligations and providing equal participation opportunities for individuals of both sexes:²

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 which 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 institution 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.

The Three-Part test furnishes three individual avenues for measuring compliance with the requirement to provide individuals of each sex with nondiscriminatory opportunities to

¹ 44 *Fed. Reg.* 71413, 71423 (1979).

² See also the Dear Colleague letter, dated January 16, 1996, entitled "Clarification of Intercollegiate Athletic Policy Guidance: the Three-Part Test" (1996 Clarification), 60 *Fed. Reg.* 51460 (1995).

participate in intercollegiate athletics. If an institution has met any part of the Three-Part test, OCR will determine that the institution is meeting this requirement.

The charts below show the total athletic opportunities for each sport offered by the College for the 2014-15 school year. The athletic opportunity calculation includes all athletes who compete in intercollegiate athletics. For example, an athlete who competes on two teams will be counted twice to calculate the athletic opportunities provided to students.

2014-15 Women’s Athletic Program Participation

Women’s Sports	# of Participation Opportunities on the Team
Softball	21
Volleyball	15
Basketball	13
Track and Field*	57
Cross Country	7
Soccer	33
Total:	146

*Track and Field counts include opportunities for both indoor and outdoor track.

2014-15 Men’s Athletic Program Participation

Men’s Sports	# of Participation Opportunities on the Team
Baseball	40
Football	91
Basketball	14
Track and Field*	49
Cross Country	9
Total:	203

The chart below shows that the participation rate of women in the intercollegiate athletics program during the 2014-15 school year (41.8%) was not proportionate to the female undergraduate enrollment at the College during that year (56.8%). There was a 15 percentage point difference between the participation rate of female athletes and overall female student enrollment.

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

Program	Rate of Participation	Rate of Enrollment
Men	203 (58.2%)	1,164 (43.2%)
Women	146 (41.8%)	1,529 (56.8%)
Total	349	2,693

OCR does not require *exact* proportionality between participation and enrollment for the underrepresented sex, but rather requires *substantial* proportionality. Whether participation opportunities are “substantially” proportionate to enrollment rates depends on the institution’s specific circumstances and the size of its athletic program. Consequently, OCR makes this determination on a case-by-case basis, rather than through use of a statistical test. Nonetheless, in order to establish a baseline, OCR analyzed how many athletic opportunities the College would have to add for females – in this case females are the underrepresented sex – in order to achieve exact and/or substantial proportionality while maintaining 203 athletic opportunities for male athletes.

OCR determined that the College would have to provide 269 athletic opportunities for females to achieve proportional athletic representation. As previously stated, during the 2014-15 school year the College offered 146 athletic opportunities for women. The College would have to add 123 athletic opportunities for female athletes to achieve exact proportionality. OCR considers 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. As a frame of reference in assessing proportional athletic representation, OCR considers the average size of teams offered for the underrepresented sex at an institution, approximately 24 in this case. OCR determined that the College would need to provide 123 additional athletic opportunities to the current athletic program for females to reach exact proportionality, which is well beyond the average team size of 24.

The female student enrollment for 2014-15 was 1,529 (56.8 percent), compared to the rate of female participation in athletics in 2014-15 of 41.8 percent. The male student enrollment for 2014-15 was 1,164 (43.2 percent) compared to the rate of male participations in athletics in 2014-15 of 58.2 percent. Given the rates of participation and enrollment for the 2014-15 school year, OCR determined that the College is not providing intercollegiate level athletic participation opportunities for female students in numbers substantially proportionate to their enrollment. Women were underrepresented in the intercollegiate athletics program when compared to their representation in the student population.

OCR also considered whether the College could show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of women because women have been and continue to be underrepresented among intercollegiate athletes at the College. OCR found the evidence did not demonstrate a continuing practice of intercollegiate athletic program expansion responsive to the developing interests and abilities of female students.

OCR considers the following factors, among others, as evidence indicating an institution’s history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- A record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- A record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex; and
- An affirmative response to requests by students or others for addition or elevation of sports.

OCR will also consider the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- The current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students; and
- The current implementation of a plan of program expansion that is responsive to developing interests and abilities.

In order to determine whether the College has shown a history and continuing practice of program expansion demonstrably responsive to the developing interests and abilities of the underrepresented sex (women), OCR reviewed data submitted by the College and conducted surveys with the athletics program staff and coaches. The College provided the following information regarding the approximate dates each of the sports comprising the men’s athletic program began intercollegiate competition.

Men’s Intercollegiate Competitive History

Sport	History
Baseball	1959 to the present
Football	1912 to the present excluding 1917-18, 1943-44
Men’s Basketball	1911 to the present excluding 1917-18
Men’s Track and Field	Men’s outdoor 1924 to the present; men’s indoor 1952 to the present excluding 1980-83
Men’s Cross Country	1958 to 1980; reinstated in 1989 to the present
Golf	1955 to 1980; reinstated as varsity sport in 1989 until 2012-13 when it was suspended due to budgetary reasons.

As the above chart indicates, all sports in the men’s athletic program participated in intercollegiate competition by 1959. The College stated that men’s track and field, baseball, and

basketball all began as a varsity sport and that most of the suspended time periods around 1980 were due to budgetary reasons.

The College provided the following information regarding the approximate dates each of the sports in the women’s athletic program began intercollegiate competition.

Women’s Intercollegiate Competitive History

Sport	History
Softball	1972 to the present
Volleyball	1971 to the present
Women’s Basketball	1970 to the present
Women’s Track and Field	1975 to the present for outdoor and indoor
Women’s Cross Country	1975 to the present excluding 1980-1989
Women’s Soccer	1997 to present (club sport prior)
Women’s Golf	1990 to 2012-13

The College stated that the origins of the women’s sport programs were mostly as varsity sports. Soccer was originally a club sport for several years before becoming an official varsity sport. The College stated that the cross country team was suspended during the 1980’s due to budgetary reasons.

As the above chart indicates, the women’s intercollegiate program began in 1970, two years before the enactment of Title IX, with women’s basketball. Volleyball was added in 1971, softball was added in 1972, and women’s track and field and cross country were added in 1975. The College added women’s golf in 1990 and women’s soccer in 1997. The College had never eliminated any women’s intercollegiate teams until the 2012-13 season, when it eliminated the men and women’s golf program due to budgetary reasons.

The College stated in its data response that the men’s and women’s golf programs were suspended after the 2012-13 season due to budgetary concerns. The resources budgeted for the teams were not adequate to provide a quality athletic experience or to field a competitive team. The golf teams were assigned a single, part-time coach (who also had another full-time job). Adequate personnel and time were not provided to support recruiting athletes, training, team travel, or coaching/skill development. At the time of program suspension, the women’s golf team had five athletes and the men’s golf team had six athletes. The College determined it was not able to provide the funding needed to provide personnel or support the operation/recruiting budget and the scholarship budget to make the golf programs competitive and provide a quality athletic experience.

The College’s data response reported that it does not have a formal written policy or procedure for adding or eliminating sports or teams from its intercollegiate athletics program, but did include a list of objectives that were a part of its “Governance and Structure” component of the athletic department’s strategic plan that has been in place since 2010. The data response indicated that no additional male sports have been considered due to the current participation numbers which favor males. The College’s response further stated it is the College’s philosophy

that the women's participation numbers need to match their undergraduate enrollment or the results of an interests and abilities survey indicates there is a demonstrated need for an additional men's program before seriously considering adding a team to the male athletic program. The College stated that there have not been any further serious discussions about the addition or elimination of any programs or implementation of a plan pending the response from OCR to the complaint.

Based on historical information about the College's intercollegiate athletics program and information provided by the College's data response, OCR concluded that the College does not have a history of program expansion for the underrepresented sex of women. The last sport the College added for women was soccer in 1997.

OCR also considered whether the College has demonstrated that the interests and abilities of the underrepresented sex (female students) have been fully and effectively accommodated by the present program. OCR reviewed documentation provided by the College and information from the coaches. As noted above, in order to demonstrate compliance under part three of the Three-Part test for accommodating interests and abilities, OCR policy requires institutions to assess the athletic interests and abilities of its student body using *multiple* indicators of interests and abilities. The preponderance of the evidence currently does not establish that the College is using multiple indicators of interests and abilities to assess the athletic interests and abilities of its student body. Although the College surveyed the athletic interests and abilities of its students in 2014, the College has not identified a plan to use the survey results to identify trends in athletic interests, as well as unmet athletic interests, and implement additional participation opportunities for females.

OCR determined that the preponderance of the evidence established that the College failed to comply with 34 C.F.R. § 106.41(c)(1). The College did not meet one of the components of OCR's three-part test to determine whether the College is accommodating the interests and abilities of the underrepresented female sex. Therefore, OCR finds the College in non-compliance regarding the accommodation of the interests and abilities of the underrepresented female sex. The attached agreement, when implemented, will resolve this finding.

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

The Title IX regulation requires recipients to provide equal athletic opportunity for members of both sexes regarding the provision of equipment and supplies. The Policy Interpretation states: "Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight training equipment." The Policy Interpretation lists five factors to be assessed in determining compliance: 1) quality (*e.g.*, condition); 2) amount (*e.g.*, adequacy); 3) suitability (*e.g.*, officially sanctioned); 4) the availability of equipment and supplies (*e.g.*, the amount of time equipment and supplies are accessible); and 5) maintenance and replacement policies and practices (*e.g.*, maintenance services such as laundry, equipment storage, and replacement schedule).

OCR's investigation included surveying the coaches for each team, gathering information from athletes through surveys, gathering information from the College regarding any maintenance and

replacement policies, and inspecting the equipment and supplies provided to each team to determine whether any disparities existed regarding the equipment and supplies provided to the men's and women's athletic teams.

During OCR's onsite inspection of equipment and supplies, OCR observed differences in the amount of certain items of apparel provided to athletes, but overall found no concerns based on team or gender in the amount or quality of equipment and supplies the College provided for the men's and the women's athletic programs. While coaches generally rated the quality, amount, suitability, and availability of the equipment and supplies provided to their teams as adequate, there were concerns in the areas of quality and amount of equipment/uniforms, predominantly with the football, track, and softball teams. While OCR noted some slight differences, OCR did not note any concerns that tended to favor one sex over another during its site visit.

Similarly, all of the College's men's and women's athletic teams have designated areas for equipment storage provided at or nearby their practice and competitive facilities. OCR found no concerns in the College's provision of equipment storage space for the men's and women's athletics program.

Regarding the maintenance of equipment, none of the teams had an equipment manager and maintenance of equipment was the responsibility of the coaches of each individual team. Laundering was conducted by the assistant coaches/graduate assistants of the baseball and football teams, while the men's and women's basketball, volleyball, and soccer teams had the assistance of student managers with laundering. Softball is the only team that did not have a graduate assistant or student manager to assist with laundering and other tasks. The softball coach was the only coach that OCR interviewed that had concerns with the laundering of the team's practice clothes and game uniforms and no students indicated any concerns related to the maintenance of practice or game uniforms: however, having softball coaches spend time laundering the team's practice and competitive uniforms took time from the coaches that could have otherwise been spent working with athletes or performing other coaching responsibilities for the team. The College's failure to provide the softball team with a graduate assistant or student manager to help launder practice clothes and game uniforms as well as help with other tasks created a compliance concern with regard to the maintenance of equipment and supplies.

Prior to the conclusion of OCR's investigation, the College requested to voluntarily resolve this concern. The attached agreement, when implemented, will resolve this concern.

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

In assessing whether the College is providing male and female athletes equivalent benefits and opportunities with respect to the scheduling of games and practice time, OCR considers the number of competitive events per sport, the time of day that competitive events and practice opportunities are scheduled, the number and length of practice opportunities, and the opportunities to engage in pre-season and post-season competition.

Number of Competitive Events

In response to OCR’s data request regarding the competitive schedules of each men’s and women’s athletic team, the College provided the 2014-15 competitive schedule of each men’s and women’s athletic team. These schedules included all exhibition games and meets and all pre-season games and meets. The number of regular season 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 NCAA Guidelines by Sport

Sport	Number of Competitive Events³	NCAA Guideline	% of NCAA Guideline
Football	11	11	100%
Men’s Basketball	26	26	100%
Baseball	49	50	98%
Men’s Average			98.9%
Women’s Basketball	26	26	100%
Softball	56	56	100%
Volleyball	21 ⁴	26	80%
Soccer	18	18	100%
Women’s Average			96%

During the 2014-15 school year, the men’s athletic teams participated in 98.9% of the NCAA maximum allowable contests permitted per sport under NCAA Division II guidelines. The women’s athletic teams participated in 96% of the maximum allowable contests. With regard to similar sports (basketball and softball/baseball), the men’s and women’s basketball teams both competed in 100% of the NCAA maximum allowable contests permitted per sport. The baseball and softball teams competed in 98% and 100%, respectively, of the NCAA maximum allowable contests permitted per sport. None of the coaches or athletes responding to OCR’s athletic survey expressed any concern regarding the number of competitive opportunities provided for their team.

Overall, during the 2014-15 school year, the men’s and women’s athletic teams competed in comparable percentages of the NCAA maximum allowable contests per sport and the number of contests in which each team competed was equivalently appropriate for each sport. OCR found no concerns between the men’s and women’s athletic programs regarding the number of competitive events.

Number, Length, and Time of Day of Practice Opportunities

The College also provided OCR with each team’s practice schedules as reported by the College

³ For all sports, only regular season games are counted, competition in conference championships, season-ending tournaments, alumni games and other exemption games is excluded from the maximum number of contests per NCAA by-laws.

⁴ 8 preseason events/tournament matches.

and tracked by their Athletic Training Room throughout the 2014-15 academic year. Below are each team's general practice times as reported by the College and as tracked by the Athletic Training Room throughout the 2014-15 academic year. For purposes of this analysis, track and cross country will not be included as OCR determined these teams practice together at the same times.

- **Baseball** – The baseball team's practice routine varied throughout the season, dependent primarily on the time of season and the amount of competition for the available practice locations. (This is true for most teams). Prior to the start of competition and early in the season, the baseball team typically practiced five days on and one day off. Before competition began, baseball practice starting times varied greatly, ranging from 5:15 a.m. to 10:00 p.m. Once competition began, most weekday practices started between 12:00 p.m. and 3:00 p.m. and lasted between two to three hours, with at least one off day per week, depending on scheduled competition. Typically, most weekend practices started at 9:00 a.m. or 12:00 p.m., dependent on any scheduled competition.

The baseball team had approximately 65 practices throughout the 2014-15 season. Thirty practices lasted two and one-half hours long, 16 of those practices lasted three hours long; the average practice length was approximately 133 minutes or two hours and thirteen minutes.

- **Football** – The football team's official season begins in September. However, the team begins strength and conditioning training once a week beginning in February and into March. The training sessions are typically one hour in length. Beginning in April, the football team has its spring training practices which last four weeks. During this time the team practices four days a week, with practice length ranging from one to two hours. There were 15 total practices in the spring; the average length of the practices was approximately one hour and forty-five minutes.

The football team resumes practice a week before competition begins. The team's practice schedule stayed very consistent throughout the 2014-15 school year. The team typically practiced six days on and one day off, with Mondays usually being the off day. The team almost exclusively began practice between 3:45-4:00 p.m. on weekdays. The practices typically lasted between one hour and forty-five minutes to two hours and fifteen minutes on Tuesdays, Wednesdays and Thursdays. On Fridays, the day before games, the practice typically lasted one hour. The team practiced on Sundays beginning at 2:30 p.m. or 4:30 p.m., with practice lasting two to three hours.

The football team had approximately 74 total practices, including the spring training and late winter/early spring strength and conditioning. Forty-three of the practices lasted between one hour and forty-five minutes and two hours. The average length of practice for the 2014-15 season was approximately 102 minutes, or one hour and forty-two minutes.

- **Men's Basketball** – During the early season and before competition begun, the men's basketball team began practice fairly consistently at 2-2:15 p.m. or 7-7:30 p.m. during the

weekdays. During that same time, the team's practice start times varied on the weekends, including starting times of 9:30 a.m., 11:00 a.m., 1:00 p.m., and 3:30 p.m. The team also had two "two-a-day" practices on Sundays during the early season, with the first practices starting in late morning at 10:00 a.m. and 11:00 a.m., respectively, and the second practices starting in the late afternoon at 5:00 p.m. During the season and especially in the heart of the season, the practice times primarily started between 2:45-3:30 p.m. during the week. The basketball games typically took place on Fridays and Saturdays; the team would have a small practice before the game ranging from forty-five minutes to one and a half hours in length. There were also six "two-a-day" practices which occurred between the students' return from Christmas break and into February, averaging 175 minutes total, or two hours and fifty-five minutes of practice for the entire day.

In all, the basketball team had approximately 126 practices, of which approximately 19 were strength and conditioning "practices" lasting forty-five minutes to an hour, and 22 were pre-game practices lasting forty-five minutes to one and a half hours. The basketball team typically practiced six days on and one day off. Overall, practice length ranged from forty-five minutes to three hours and forty-five minutes, with approximately 80 of the practices lasting between one and a half to three hours long. The average practice length for the men's basketball team was approximately 108 minutes, or one hour and forty-eight minutes.

- **Women's Basketball** – During the early season and before the games started, the women's basketball team starting practice times varied, but the practices primarily started in the late afternoon between 3 p.m. and 7 p.m. The practices ranged from one hour to three hours in length. During that same time period the team's practice start times varied on the weekends, including starting times of 6:15 a.m., 10:15 a.m., and 1:30 p.m. The team also had several two "two-a-day" practices in the early season typically consisting of one hour strength and conditioning practice and a longer scheduled team practice. During the season, the practice starting times primarily ranged between 4:00-7:00 p.m. during the week, and during the heart of the season the team practiced almost exclusively at 6:00 p.m. with practices lasting two and a half hours in length. Like men's basketball, the women's games typically took place on Fridays and Saturdays. The women's basketball team typically had Sundays off during the heart of the season unless a game was scheduled.

In all, the women's basketball team had approximately 97 practices, of which approximately 14 were strength and conditioning "practices" typically lasting one hour. The women's basketball team typically practiced six days on and one day off. Overall, practice length ranged from one hour to four hours and fifteen minutes, with approximately 57 of the practices lasting between two to three hours long. The average practice length for the women's basketball team was approximately 138 minutes, or two hours and eighteen minutes.

- **Softball** – During the early season and before games began, the softball team began practice fairly consistently in the early mornings at times ranging from 6:00 a.m., 6:30 a.m., and 7:00 a.m. The practices ranged in length from one hour to three hours. During

the early season before competition had begun, the softball team also held several “two-a-day” practices, typically consisting of a one hour to one hour and forty-five minute shorter practice or strength and conditioning practice at a time early in the morning, and a later two to three hour practice at a later point in the day. Also during this early season time, the team generally practiced six days on and one day off (Sundays).

One week prior to the start of competition and once competition began the softball teams’ practice time varied depending on the schedule of competition, but primarily started between 5:30-6:30 a.m. or 12:00 p.m.-3:45 p.m., with practices typically ranging from one hour and forty-five minutes to two hours in length depending on scheduled competition. Much like baseball, games were scheduled throughout the season and often occurred during the week; therefore the length and scheduling of practice during the season was dependent on whether a game had been played the previous day or was to be played the next day.

Overall, the softball team had approximately 76 practices, including 8 of which were strength and conditioning practices. Practice length ranged from one hour to three hours, with the average length being approximately 110 minutes, or one hour and fifty minutes.

- **Soccer** – The women’s soccer team’s practice routine varied greatly throughout the early, pre-competition part of the season. Prior to the start of competition and early in the season, soccer practice starting times ranged from 6:00 a.m. to 8:00 p.m. The soccer team held three multi-practice days in the early season. Once the games began, most weekday practices started between 4:00 p.m. and 7:00 p.m., almost exclusively starting at 4:00 p.m. During the heart of the season, practices typically lasted two to two and a half hours long, with at least one off day per week, depending on scheduled competition. Typically, most games were played on Saturdays and Sundays.

The soccer team had approximately 50 practices throughout the 2014-15 season. Forty-three of those 50 practices lasted between two and two and one-half hours in length. The average soccer practice was approximately 122 minutes, or two hours and two minutes.

- **Volleyball** – During the first week of practice, women’s volleyball participated in several “two-a-day” practices, with the first practice starting at 9:00 a.m. and the second practice starting at 1:30 p.m., both lasting two and a half hours long. During the pre-competition and early part of the season, the team’s practice start time varied during the week, ranging from 2-4:30 p.m., and 5-7:00 p.m. The team typically practiced on Saturdays at 9:00 a.m. During the early season the team typically practiced six days on and one day off, with Sundays typically assigned as the off day. The practices typically lasted two to two and one-half hours long.

Once competition began, the team’s practice schedule varied due to the sporadic nature of the team’s scheduled matches. The team typically competed on Fridays and Saturdays, but would occasionally have competition during the week. During the competition phase of the season, the team almost exclusively practiced at 2:00 p.m. on Mondays and Wednesdays, and 4:30 p.m. and 6:30 a.m. on Tuesdays and Thursdays, respectively,

dependent on scheduled competition. These practices typically lasted two to two and one-half hours long.

Overall, the volleyball team had approximately 60 practices. Forty-four of the 60 practices lasted between two and two and one-half hours in length. The average volleyball practice lasted 115 minutes, or one hour and fifty-five minutes.

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 approximately two hours on average and for five or six days a week when in season, with several coaches reporting shortened practices during competition. Coaches and athletes surveyed by OCR reported that the number and length of practice sessions were sufficient.

Time of Day that Competitive Events are Scheduled

According to the College's data response and survey responses from the coaches, competition schedules for NSIC conference games are established by the NSIC conference office and distributed to member schools. Coaches schedule non-conference competition at their discretion after receiving the conference schedule. The College stated that schedules are constructed for all sports in order to provide competitive equity while remaining within budgetary constraints and applicable College, Conference, and NCAA rules and regulations. All schedules are subject to the final approval of the Director of Athletics.

All of the coaches indicated that competitive events for their respective teams generally were scheduled on days and at times appropriate for their sports and that they had adequate opportunities to compete in front of an audience.

Pre- and Post-Season Competition

All of the College's men's and women's athletic teams, except football, have the opportunity to participate in pre-season competition by invitation or solicitation. All of the other teams participated in at least two pre-season competitions, except for the softball team, which played a full 56 game regular season schedule. Soccer had three pre-season matches and volleyball had eight. Both the men's and women's basketball teams played three pre-season or exhibition games.

According to the College's response to this complaint, generally post-season competition for all of the College's intercollegiate athletic teams is by qualification only, and no individuals or teams qualifying for post-season competition have been denied the opportunity to participate.

Overall, OCR found no concerns with 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 between male and female programs.

OCR determined that the preponderance of the evidence established that the College provided 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 and is in compliance with 34 C.F.R. § 106.41(c)(3).

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

In assessing compliance in this area, OCR considers modes of transportation, housing and dining arrangements furnished during travel, length of stay before and after competitive events, and per diem allowances. OCR examined the College’s policies and procedures related to travel and per diem. In addition, OCR conducted surveys with coaches and athletes related to travel and per diem.

The coaches for all men’s and women’s athletics teams survey responses indicated they had no concerns with the mode of transportation provided for their teams. One assistant track and field coach stated he wished they were able to stay overnight the day before some meets so that they would not have to travel the morning of a meet. This concern equally impacts the male and female athletes and thus does not create a disparity.

Generally during the 2014-15 school year, the men’s and women’s teams used chartered busses and travelled overnight as needed in order to have an adequate amount of time before and after their competitive events. The survey indicated that the College has a contract with Arrow Bus Company. The men’s and women’s track and field teams and the men’s and women’s cross country teams, along with the volleyball, softball, and women’s basketball teams occasionally used vans. The track and field team used vans more regularly than any other team because the small number of athletes competing in particular events at particular times during a meet did not justify use of a larger vehicle.

2014-15 Lodging Arrangements by Team

Team	Hotels	# of athletes per room
Football	Quality Inn, Sheraton Inn, Holiday Inn, Ramada Inn	2 per room, 1 per bed
Baseball	Fairfield Inn, Days Inn, American Inn, Ramada Inn, Comfort Inn, Sandy Ridge Condos (Florida)	2 per room (unless more than 2 beds in room, then occasionally 3), 1 per bed
Men’s Basketball	Refer to business office. GA picks out hotels	2 per room, 1 per bed
Men’s and Women’s Track and Field	Just states “Hotels”	2 per room, 1 per bed
Volleyball	Fairfield Inn, Courtyard by Marriot, Country Inn, Best Western, American Inn, Four	2 per room, 1 per bed

Team	Hotels	# of athletes per room
	Point	
Softball	Super 8, Marriot, Comfort Inn and Suites, American Inn, Country Inn by Carlson	2 per room, 1 per bed
Women's Basketball	Fairfield Inn, Ramada Inn, American Inn, Super 8, Courtyard by Marriot	2 per room (unless more than 2 beds in room, then occasionally 3), 1 per bed
Soccer	Unsure of names	2 per room

Athletes and coaches responding to OCR's survey confirmed that the men's and women's teams usually stay in hotels with two athletes per room, apart for men's baseball and women's basketball, which reported that on occasion they will have more than two athletes per room if a room has more than two beds. It is also stated in the athletic department's financial handbook that it is policy for all teams that there be only one participant per bed, but that it was permissible to request roll-away beds and have more than two students per room.

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, usually those that offered complimentary breakfast.

Regarding per diem and dining arrangements, none of the coaches interviewed by OCR had concerns with the meals the College provided athletes when traveling for competition. Athletes who responded to OCR's athletics survey confirmed that they were not required to pay for meals and that they ate at a range of restaurants including buffets, moderately priced sit-down restaurants, pizza shops, and sandwich shops. Generally, the athletes also had no concerns with the meals the College provided for them when traveling to away events.⁵

OCR noted that in some instances, the men's and women's track and field, softball, and women's basketball teams ate sack lunches or purchased food items from a store for midday meals/snacks to eat at their competition site, rather than eating at a restaurant because of the nature of the competition (track and field) or the team's competition schedule (doubleheaders for softball and early afternoon games for baseball). OCR noted that the men's and women's track/cross country teams ate sack lunches more frequently than the other teams, however, this impacted the two men's and two women's teams equally creating no overall disparity between the male and female athletes. OCR noted small 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 restaurants including buffets, 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.

⁵ Several students commented that the quality and nutritional value of some of the meals was poor or that they get tired of eating the same things, i.e., Jimmy Johns or Pizza; this information alone is not sufficient evidence to indicate an overall disparity in the quality of meals provided to men's and women's teams when traveling to away events.

Overall, OCR found that both the men's and women's teams used similar modes of transportation when traveling to similar destinations and spent similar amounts on lodging and meals with like-sized teams. Both the men's and women's teams stayed in similar hotels and dined in comparable restaurants. When there were differences in the meals provided to athletes or the mode of transportation to an event, OCR determined these differences were due to legitimate nondiscriminatory reasons: specifically, the nature of the sport, how far the team had to travel, and the time of day when the competitive events occurred. OCR found no concerns 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, all men and women's teams stayed in comparable lodging. Coaches reported and athletes confirmed that two to three athletes stayed in a room when an overnight was required and there was only one athlete per bed.

Based on the above, OCR found no concerns in the College's provision of travel and per diem allowance between the men's and women's athletic programs. OCR concluded the preponderance of the evidence established that the College provided equivalent travel and meal allowances to male and female programs and is in compliance with 34 C.F.R. § 106.41(c)(4).

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

Compliance in the opportunity to receive academic tutoring and the assignment and compensation of tutors component is determined by examining multiple factors, including the quality and availability of tutoring for men and women, the procedures and criteria for obtaining tutorial assistance, and tutor qualifications and experience. OCR reviewed information from the College's website and survey responses from coaches, the athletic director, and athletes.

According to the College's athletic director, there are no separate tutoring services specifically provided by the athletic department or the College to athletes. Athletes use the same tutoring services as other students. The College provides four academic supports available to all students through the Holland Academic Success Center⁶: the Academic Coaching Program, General Studies Courses, the Peer Tutor Program, and the Writing Help Desk. All of the academic services are offered to all students, including athletes, at no additional cost, except for the courses offered as General Studies, which students may enroll in through general registration.

There is no athletics department oversight of the tutoring services provided, nor is there any specific team-based tutoring service provided to male or female athletes in general. However, though not reported by the coaches on their survey, one athlete reported that the baseball team's volunteer graduate assistant provides tutoring for the team members with a grade point average below 3.0 on his own accord. Information provided by athletes and coaches confirmed that tutorial assistance was readily available to intercollegiate athletes at the College. The College currently has 27 peer students on staff covering a wide range of subject areas.

⁶ https://www.wsc.edu/info/20177/holland_academic_success_center/90/holland_academic_success_center/2

To become a tutor, students must have a grade point average of 3.0 or higher, have completed 60 credit hours, commit to a minimum of two semesters of tutoring, be recommended by a department chair or faculty, and possess good communication skills. No athletes or coaches raised concerns regarding the quality of the tutors provided at the College.

Based on the above, OCR concluded that the preponderance of the evidence established that the College provided an equal opportunity to male and female athletes to receive academic tutoring and is in compliance with 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)

In determining compliance with regard to this component, the Policy Interpretation requires consideration of the relative availability of: 1) full time coaches; 2) part time and assistant coaches; and 3) graduate assistants. Additionally, the training, experience, compensation, other professional qualifications, and professional standing are considered.

Availability of Coaches

For intercollegiate athletics programs, OCR's analysis of the availability of coaches consists of separating the women's from the men's program, determining the full-time equivalence (FTE)⁷ 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 20 coaches on the intercollegiate athletic coaching staff (not counting graduate assistants/student assistants). OCR considered the men's and women's track and field and cross country teams to be combined teams because they have the same coaches, and they practice and compete at the same or similar times. Therefore, the coaches for these teams were not included in the analysis of this component. Consequently, the total number of coaches considered in OCR's analysis of the availability of coaches was 17.

The below charts show the percent of time spent coaching, the contract length, and the FTEs for head and assistant coaches.⁸

⁷ 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.).

⁸ The College provided the information regarding the percent of time spent coaching and the contract length. Using this information, OCR computed the FTEs.

2014-15 Head Coach FTEs

Team	# Head Coach	% Coaching	Contract Length	FTE	# Athletes
Football	1	100%	11 mos.	.92	91
Men's Basketball	1	100%	11 mos.	.92	14
Baseball	1	75%	12 mos.	.75	40
Volleyball	1	100%	11 mos.	.92	15
Women's Basketball	1	100%	11 mos.	.92	13
Softball	1	100%	12 mos.	1.00	21
Soccer	1	100%	11 mos.	.92	33
Total	7			6.35	227

2014-15 Assistant Coach FTEs

Team	# Assistant Coaches	% Coaching	Contract Length	FTE	# Athletes
Football	4 ⁹	100% 47% 100% 100%	9 mos. 5 ½ mos. 12 mos. 6 mos.	.75 .22 1.00 .50	91
Men's Basketball	1	100%	12 mos.	1.00	14
Baseball	1	35 hours per week	12 mos.	.88	40
Volleyball	1	100%	12 mos.	1.00	15
Women's Basketball	1	100%	12 mos.	1.00	13
Softball	1	30 hours per week	6 mos.	.38	21
Soccer	1	20 hours per week	9 ½ mos.	.40	33
Total	10			7.13	227

Football had a FTE for head and assistant coaches of 3.39 for 91 athletes or a ratio of 1 coach per 26.8 athletes.¹⁰ Men's basketball had a FTE for head and assistant coaches of 1.92 for 14

⁹ The College stated in its data response that two assistant coaches resigned after the 2014-15 year. However the positions were filled and there are currently 4 assistant coaches with the team.

athletes for a ratio of 1:7.29. Baseball had a FTE for head and assistant coaches of 1.63 for 40 athletes for a ratio of 1:24.5. Overall, the men's program had a FTE for head and assistant coaches of 6.94 for 145 athletes for a ratio of 1:20.9.

Volleyball had a FTE for head and assistant coaches of 1.92 for 15 athletes for a ratio of 1:7.8. Women's basketball had a FTE for head and assistant coaches of 1.92 for 13 athletes for a ratio of 1:6.8. Softball had a FTE for head and assistant coaches of 1.38 for 21 athletes for a ratio of 1:15.2. Soccer had a FTE for head and assistant coaches of 1.32 for 33 athletes for a ratio of 1:25. Overall, the women's program had a FTE for head and assistant coaches of 6.54 for 82 athletes for a ratio of 1:12.5.

The head and assistant softball coaches expressed concern that the team only has the part time assistant coach who essentially works full-time but does not get paid for the work she puts in. The head softball coach stated that the teams they compete against and the other programs at the College have at least a full-time assistant coach and/or a graduate assistant. One assistant football coach and a track and field assistant coach stated that they needed more full-time coaches.¹¹

In the 2014-15 academic year there were 145 male athletes and 82 female athletes participating in the University's intercollegiate athletic program. The ratio of head coaches and assistant coaches to number of athletes coached is 1:20.9 for men's sports and 1:12.5 for women's sports; a disparity favoring women athletes. However, the average number of coaches for the men's and women's teams was similar (6.94 coaches for the men's teams and 6.54 for the women's teams). OCR has concluded that the preponderance of the evidence established that the disparity in the number of athletes per coach is therefore attributable to a non-discriminatory factor; the number of athletes on the football team.

Assignment of Coaches

When comparing education between the coaches, five football coaches (head and all four assistants), the head coach and assistant coach for women's volleyball, the head coach for women's softball, and the head coach for women's soccer were the only coaches to have graduate level degrees, as of the 2014-15 school year.¹² When looking at comparable sports, both the men's and women's head and assistant basketball coaches had bachelor's degrees. The softball head coach had a graduate level degree, and the baseball head coach had a bachelor's degree. Overall, the number of coaches with graduate level degrees from men's programs outnumbered the number of coaches with graduate level degrees from women's programs by one

¹⁰ To determine a team's total FTE, OCR first calculated individual coaches FTE based on their contract length and their percentage of coaching duties. OCR did this by dividing the number of months in a year that a coach worked to establish a base FTE. OCR then multiplied this number against the percentage of a coach's time that was spent coaching to find their overall FTE. For example: One assistant football coach had a contract length of 5 and a half months and coaching duties of 47 percent. $5.5/12\text{months} = .4583$; $.4583 (.47) = .215$ FTE. Once all individual coach's FTEs were determined, they were added together to come up with the programs total FTE. This number was divided into the total number of players on a team to determine the ratio of coaches to athletes. For football, 91 athletes divided by a FTE of 3.39 coaches ($91/3.39=26.8$) equals 26.8 athletes per coach.

¹¹ Softball was the only team that did not have at least one graduate/student manager.

¹² OCR has no information regarding the educational background of the assistant soccer coach. .

(5-4). However, the number of individual teams with a head coach with a graduate level degree favored the women's programs by a difference of three to one (3-1). OCR determined that these disparities offset one another and that the College was providing coaches of equivalent educational backgrounds to both male and female backgrounds.

When comparing coaching experience, OCR considered coaching experience as a head or assistant coach at the high school or college level. For the purposes of this analysis, as of the 2014-15 school year, the men's athletics program had a total of nine coaches with the following years of high school and collegiate coaching experience: 27, 8, 1, 12, 9, 14, 3, 4, and 1. The average years of coaching experience per coach was 8.8 years. The women's athletics program had a total of eight coaches with the following years of high school and collegiate coaching experience: 20, 7, 16, 15, 9, 5, 9, and 7. The average years of coaching experience per coach was 11 years. A comparison of the average years of coaching experience of the coaches of the men's and women's teams reveals a difference of 2.2 years of combined high school and collegiate coaching experience favoring the women'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 27, 14, and 4 years of coaching experience; an average of 15 years of coaching experience per coach. The head coaches of the four women's teams (volleyball, women's basketball, soccer and softball) had 20, 16, 9, and 9 years of coaching experience; an average of 13.5 years of coaching experience per 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 1.5 years of experience favoring the men's program.

Although the differences in the head coaching experience between the coaches of the men's teams and the coaches of the women's teams 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. 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. Although there was a slightly lower difference in head coach experience for women's sports than men's sports, three of the four women's sports had highly successful winning seasons and therefore OCR concluded that the preponderance of the evidence supports a conclusion that the assignment and experience of coaches does not raise a compliance concern.

Compensation of Coaches

In determining compliance for compensation of coaches, OCR examines the allocation of funds for coaching to the men's and women's programs. 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, except for the track and field and cross country coaches.¹³ During the 2014-15 school year, the College paid \$750,854 for coaches' salaries in the men's and women's athletics program. Of that, the College paid \$408,515 (54.4%) to coaches in the men's athletic program and \$342,339 (45.6%) to coaches in the women's athletics 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 Programs¹⁴

Program	Rate of Participation	Salaries
Men	145 (63.9%)	\$408,515 (54.4%)
Women	82 (36.1%)	\$342,339 (45.6%)
Total	227	\$750,854

OCR also compared the total coaching salaries paid to head coaches in the men's athletic program to the total coaching salaries paid to head coaches in the women's athletic program. During the 2014-15 school year, the College spent a total of \$205,887 on the salaries of head coaches in the men's program and \$245,705 on the salaries of head coaches in the women's program with a difference of \$39,818 more for women's head coaches. However, the women's program had an additional sport and head coach. 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 \$202,628 on the salaries of assistant coaches in the men's program and \$96,634 on the salaries of assistant coaches in the women's program with a difference of \$105,994 favoring the men's program.

The comparisons of coaching salaries of head and assistant coaches in both the men's and women's athletic programs show an overall difference in coaching compensation favoring the women's program as it relates to head coaches, and favoring the men's program as it relates to assistant coaches. Salaries paid to the assistant coaches in the football program are the primary factor contributing to the difference in assistant coach salaries. 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 football team has a large squad, which requires a large coaching staff including four assistant coaches. OCR found the differences in

¹³ This count only includes the salaries paid to all head coaches and assistant coaches except the coaches for the track and cross country teams, as in the FTE count above. OCR considers men and women's track and cross country to be combined sports for the purpose of this analysis.

¹⁴ As noted above, the men's and women's track and field teams and the men's and women's cross country teams are not included in the coaching analysis because OCR considers them to be combined sports.

the coaching salaries of the head coaches is primarily the result of the women's program having an additional sport and head coach. OCR found the differences in the coaching salaries of the assistant coaches is primarily the result of nondiscriminatory factors regarding the greater number of athletes on the football team.

OCR's also considered compensation differences between coaching staff in comparable sports such as men's and women's basketball, and baseball and softball. During the 2014-15 school year, the College paid the men's basketball head coach a salary of \$75,990 and the women's basketball head coach \$81,485; a difference of \$5,495 favoring the women's program. During the 2014-15 school year, the College paid the baseball head coach a salary of \$46,000 and the softball head coach a salary of \$51,000; a difference of \$5,000 favoring the women's program. OCR considered whether these differences in salary were justified by nondiscriminatory factors. OCR found that the men's basketball head coach had less total coaching experience and less success than the women's basketball head coach. Specifically, the head men's basketball coach had 14 years of coaching experience (2 years at Wayne State) and the head women's basketball coach had 16 years of coaching experience (7 years at Wayne State). The men's basketball program had one winning season in the last seven years, whereas the women's basketball program has not had a losing season in the last ten years. The softball head coach had five more years' experience in coaching than the baseball head coach and a proven history of success at the College.

During the 2014-15 school year, the College paid the men's basketball assistant coach \$37,995 and the women's basketball assistant coach \$41,482; a difference of \$3,487 favoring the women's program. OCR again considered whether the difference in salary was justified by nondiscriminatory factors. OCR found that the men's and women's assistant coaches' salaries appeared to be commensurate with the assistant coaches' coaching experience. The women's assistant basketball coach had 15 years of collegiate coaching experience compared to three years of experience for the men's basketball assistant coach.

During the 2014-15 school year, the College paid the baseball assistant coach a salary of approximately \$30,000 and the assistant softball coach a salary of approximately \$10,000; a difference of \$20,000 favoring the men's program. The softball assistant coach was in her fifth year of coaching at the collegiate level compared to the baseball assistant coach who had one year of coaching experience. However, the assistant baseball coach had four years of minor league professional experience as a player. In addition, the baseball assistant coach has a 12 month contract and works 35 hours a week; the softball assistant coach has a 6 month contract and works 30 hours per week. The assistant baseball coach has a longer contract and is paid more. The softball assistant coach has a shorter contract, works less hours per week, and does laundry, which decreases the availability of the assistant coach to the softball athletes. OCR determined that a compliance concern exists regarding the overall difference in the assignment of duties and salary between these two coaches. OCR also determined that a compliance concern exists in the assignment of duties and the salary paid to the assistant soccer coach who worked 696 hours over a ten month period at \$10 an hour (\$6,960).

Prior to the conclusion of OCR's investigation, the College requested to voluntarily resolve this compliance concern. The attached agreement, when implemented, will resolve this area.

Locker Rooms, Practice, and Competitive Facilities - 34 C.F.R. § 106.41(c)(7)

When assessing compliance with the program component of the Provision of Locker Rooms, 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.

In determining compliance with this component, OCR reviewed documentation provided by the College, conducted surveys of coaches and student athletes, as well as conducted an on-site visit of each of the College's locker room and practice and competitive facilities.

Quality and Availability of Practice and Competitive Facilities

OCR noted that overall the competitive fields for the baseball and softball teams are of comparable quality. OCR noted that the same competitive facilities were used for men's basketball, women's basketball, and volleyball and were of adequate quality. OCR confirmed during its onsite inspection of the women's soccer team that the soccer complex did not have lights. Several women's soccer players also had concerns with the quality of their field stating that when it rains the field becomes flooded and they cannot practice or use the field for competition. Coaches stated that the soccer team has used the football stadium on at least one occasion to allow for night competition. Coaches confirmed during the onsite visit that football gets priority use of Memorial Stadium. Coaches for men's basketball, women's basketball, and volleyball confirmed that they work with the associate athletic director on scheduling practices and that there are no conflicts with competitive event scheduling. Both the baseball and the softball complex have no lights. Due to the potential for flooding, OCR found a compliance concern in the overall quality of the women's soccer field.

Prior to the conclusion of OCR's investigation, the College requested to voluntarily resolve this complaint. The attached agreement, when implemented, will resolve this concern.

Though the scheduling and availability of indoor practice opportunities was of concern to many athletes, OCR found that this problem affects both men and women's programs equally and thus did not create a disparity favoring one sex over another.

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 and/or policies, inspected practice and competitive facilities in person, and surveyed coaches and athletes.

The College did not provide specific practice schedules for each team and facility; however coaches were asked in surveys to describe the exclusivity and use of their practice and competitive facilities by their team and any other team, including whether their team has priority, how times are scheduled, and if there have been times where there were conflicts that disrupted practice or competitive events.

The men's and women's basketball teams and the volleyball team share the same auditorium/gym for practice and competition. The football team shares the outdoor track area at the stadium at times with outdoor track and field, and at times with the band and the soccer team; however, the football team has priority use of their fields when in season. The soccer team generally has exclusive use of its field for practice and competition. The baseball team and the softball team each have exclusive use of their own fields for practice and competition.

All teams used the Recreation Center for inclement weather/out of season practice; however, the in-season teams always have priority. It is up to the coaches to work out schedules. All coaches surveyed by OCR confirmed that they shared practice facilities in the manner outlined above. All coaches indicated that their respective teams had exclusive use of their competitive facility for competitive events and rated that exclusivity as adequate or excellent.

All coaches surveyed by OCR rated the exclusivity of their practice facilities as adequate or excellent except for the assistant softball coach, the assistant women's basketball coach, and an assistant track and field coach. The assistant women's basketball coach stated that the reason he rated the exclusivity of the practice facility as poor was because they don't have a "practice" facility. The assistant softball coach stated that she rated the exclusivity of the practice facility as poor because when they have indoor practice, the general population can be in the facility using the track which limits the team's access to the track. She also stated that they have had to cancel practice due to indoor track meets because the track team had priority in that situation.¹⁵ The assistant track coach also stated the exclusivity of practice facilities was poor because they share the indoor track and the Recreation Center with the general public.

As mentioned above, many athletes responding to OCR's athletics survey rated the availability of their practice and competitive facilities as excellent or good. However, several athletes from all sports rated the availability of their practice facilities as fair and 10 rated the availability as poor.

Overall, OCR determined the practice limitations impacted both the men's and women's programs which often practice together in the same facility at the same times, and thus does not create or contribute to a disparity between the men's and women's athletics programs. Based on the information provided by the coaches and athletes, OCR found no concerns with the exclusivity of practice and competitive facilities in the College's intercollegiate athletics program favoring one sex over another.

¹⁵ This has been a reoccurring concern among many teams, but primarily the softball and track and field teams.

Quality and Availability of Locker Rooms

During the 2014-15 school year, all of the College's intercollegiate athletic teams had exclusive locker rooms except for the men's and women's track/cross country teams, which have access to the Recreation Center lockers. During OCR's August 2015 site visit, OCR inspected each team's locker rooms. The College also provided information about the locker rooms.

The locker room for the football team is substantially larger than the locker rooms for all other men's and women's athletic teams, but is appropriately sized given the number of athletes on the football team and the amount of equipment assigned to each football player. The locker rooms for men's basketball, women's basketball, and volleyball are comparably sized and modeled, as are the baseball and softball locker rooms.

The men's basketball, women's basketball, women's soccer, and volleyball teams all have identical lockers constructed from stained wood with a wildcat paw print logo on the upper-front corner storage cabinet. Each locker is a storage compartment that can be locked by combination lock. Hooks for hanging clothes line the side wall of the lockers, and the bottom is a shelf/seat that lifts to provide additional storage. There is also a hanging rod across the top of each locker. The lockers for the football team are similar except they are larger (wider) in order to accommodate football equipment. The softball and baseball team's lockers are a painted yellow metal with a top shelf consisting of a lockable storage compartment. There is a hanging rod and coat hangers in the middle section, and the bottom is a shelf/seat that lifts to provide additional storage.

The showers and restrooms in all of the locker rooms (excluding softball and baseball) are very similar in quality. The open showers in the football team's locker room have tiled floors and floor to ceiling tiled walls. Just outside the showers is a narrow area, with a tiled floor and walls and hooks along the wall for towels. As noted above, the remaining teams have similar open shower areas, with less shower heads. All of the restroom walls and floors are tiled. The toilet stalls and urinals are identical in all locker rooms, apart from baseball and softball which appear a little more dated but none the less comparable; the sinks and mirrors are not identical, but are comparable. The couches, loveseats, and chairs in the dressing rooms of the men's and women's basketball teams and the volleyball team are of the same style and materials.

The head and assistant coaches for all sports, aside from men's and women's track and field, confirmed that their teams had exclusive use of their assigned locker rooms. The College also confirmed that all the teams' facilities, aside from the soccer complex, may be occasionally used for a tournament or a high school event; however, these occasions never interfered with the teams' use of their assigned locker rooms for practice and competition.

The women's soccer team's locker room contained less lockers than players (25 lockers). During the 2014-15 school year, the soccer team had 33 athletes. OCR staff noted that the baseball team had 38 lockers, and had 40 athletes on its roster. However, only athletes from the soccer team expressed concern about the lack of lockers to fully accommodate the whole team. OCR concluded the need for 16 soccer players to share lockers, a difference that is otherwise not

mitigated, along with the concerns surrounding size, availability, and privacy, creates a compliance concern regarding the availability of lockers for the women's program.

Prior to the conclusion of OCR's investigation, the College requested to voluntarily resolve this compliance concern. The attached agreement, when implemented, will resolve this concern.

Maintenance and Preparation of Practice and Competitive Facilities

In interviews with OCR staff, all head and assistant coaches interviewed rated the maintenance and preparation of their practice and competitive facilities as excellent or adequate, except for the assistant women's basketball coach who rated the maintenance of the practice facility as poor because "we do not have a practice facility." Coaches for football, men's and women's basketball, men and women's track, soccer, and volleyball stated that the athletic department's facility services and custodial and maintenance staff completed some or all of the maintenance and preparation of their practice and competitive facilities. The volleyball and women's basketball coaches also stated that their coaching staff and athletes help prepare and keep facilities clean. Coaches for softball and baseball indicated that the coaches and players shared some responsibility for the maintenance and preparation of their practice and competitive facilities, and that the head coaches maintained the fields. The head baseball coach told OCR that he mows the infield and outfield grass at the baseball and softball team's practice and competitive facility, which was confirmed by the head softball coach. The coaching staff for each team takes care of the remainder of the maintenance and preparation of their fields. The coaches for men's and women's track and field said they also help maintain their practice and competitive facilities and the janitorial staff upkeep the locker rooms in the Recreation Center. The women's soccer student assistant stated that "baseball helps with maintenance" of their facilities (mowing). Athletes responding to OCR's athletics survey generally indicated that the maintenance and preparation of their practice facilities was fair, good or excellent.¹⁶

Overall, OCR determined that the College provided equivalent benefits and opportunities to female and male athletes in the areas of exclusivity of practice and competitive facilities, and in the maintenance and preparation of their practice and competitive facilities. However, OCR found a disparity favoring the men's programs regarding the quality of practice and competitive facilities. Many soccer athletes expressed concern about the flooding that occurs at the soccer field, which disrupts practice and/or competition. OCR also found a disparity in the exclusivity/availability of the locker rooms provided for the men's and women's teams favoring the men's teams. During the 2014-15 school year, the soccer team had more athletes than lockers. The soccer team had 25 lockers for 33 athletes. The shortage of lockers impacted 16 members of the soccer team, eight who did not have their own locker, who in turn shared with another eight players. Further, there were many concerns expressed regarding the privacy and functionality of the soccer locker room, including limited/cramped space, as well as access from and proximity to the janitorial/maintenance staff's office (which includes male staff).

Prior to the conclusion of OCR's investigation, the College requested to voluntarily resolve this complaint. The attached agreement, when implemented, will resolve the compliance concerns

¹⁶ Three football athletes indicated the maintenance and preparation of the football team's practice facility was poor, but provided no explanation for the rating.

regarding the equivalent provision locker rooms, practice, and competitive facilities under 34 C.F.R. § 106.41(c)(7).

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

In determining compliance in the provision of medical and training facilities and services, OCR addresses five factors. To assess compliance in this area, OCR considers the following:

1. Availability of medical personnel and assistance;
2. Health, accident and injury insurance coverage for athletic participants;
3. Weight and conditioning facilities;
4. Availability and qualifications of athletic trainers; and
5. Quality and availability of training facilities.

Availability of Medical Personnel and Assistance

According to the head athletic trainer, during the 2014-15 academic year, the athletic department consisted of five athletic trainers. Q The head athletic trainer and two assistant trainers work on a full-time basis. There are also two graduate assistant athletic trainers.

There are no additional medical personal at practices for any team and football is the only team which has additional medical personnel present at home games. The medical personnel available at home football games is split between two orthopedic surgeons. Emergency Medical Technicians are also present at the football games. The head athletic trainer stated that on days when there is a home football game, the physician will have an open “clinic visit” so that if there are other athletes that may need to be seen, they can be seen on those days. The head trainer stated that there is a space in the athletic training room devoted for the use of the physician’s visits.

In the athletic survey, the head athletic trainer confirmed that annual physical examinations of athletes are required and are obtained by and paid by students on their own behalf before they come to campus. The coaches for all men’s and women’s teams confirmed that the athletes pay for their own physical examinations.

Health, Accident and Injury Insurance Coverage

The College provides health insurance coverage for all athletes on all men’s and women’s teams, without regard to the team or gender of the athlete. The insurance provided by the College is secondary insurance to supplement an athlete’s personal health insurance. According to interviews with coaches, as a requirement, the athletes must have their own primary insurance. Based on documentation of the insurance coverage from the College, 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.

Availability and Quality of Weight and Conditioning Facilities

According to the College's data request response and surveys with the coaches, all athletic programs, male and female, have access to the weight room located on the ground floor of the Memorial Stadium grandstand. This facility is solely for athletes. All students on campus, including athletes, have access to the facility located in the Recreation Center.

The College's data response and the coaches who responded in the survey did not provide specific procedures for how the teams schedule their times, but stated that coaches work out the schedule with the associate athletic director. The College did provide a "Facility Usage for Out of Season Teams" schedule. The College stated that any out of season use/practice is to be scheduled with the Recreation Center director. The College also provided a copy of what a typical weight room schedule looks like for a week during the fall season. This showed that all in season teams had times. Most coaches stated that the scheduling depends on the athletes' class schedules.

Through the online surveys conducted by OCR, many female teams expressed concern that the weight room becomes overcrowded or difficult to use with so many other teams competing to use the room. Many stated that there are scheduling conflicts and times where other teams/athletes will be using the weight room during another team's scheduled time.

During OCR's onsite visit, OCR staff inspected the weight and conditioning facilities. At the time of OCR's onsite inspection of the weight and conditioning facilities, the quality of the workout stations and the maintenance were sufficient. Based on the information provided by the College, it appears there is some form of scheduling system in place. However, with the limited data provided and the concerns expressed by many female teams and their coaches, OCR found a compliance concern exists when it comes to the availability of the weight training facility.

Prior to the conclusion of OCR's investigation, the College requested to voluntarily resolve this component. The attached agreement, when implemented, will resolve this concern.

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

According to the head athletic trainer, during the 2014-15 school year the College employed five athletic trainers (herself, two assistant athletic trainers, and two graduate assistants) to provide athletic training services in the College's intercollegiate athletics program. All of the athletic trainers, including the graduate assistants, are certified by the National Athletic Trainer Association Board of Certification and licensed by the state. The head athletic trainer has a Doctorate in Education (Ed.D).

During the 2014-15 school year, the head athletic trainer worked primarily with the football, men's basketball, and softball teams. One assistant athletic trainer worked with soccer and women's basketball and helped with spring football. The second assistant athletic trainer worked with volleyball and baseball, spending approximately 3-4 months with each team covering all practices and games. The first graduate assistant worked with football and men's and women's track and field. The second graduate assistant worked with men and women's cross country and helped with spring football. The College does not have any student athletic trainers.

According to the head athletic trainer, the certified athletic trainers are assigned based on an “Athletic Training Coverage Model” that is developed by the athletic director and the head athletic trainer. The head athletic trainer stated that her goal is to provide adequate coverage to all sports within the means of the athletic training department’s staff, as well as give the graduate assistants experience working in different sports.

During the 2014-15 school year, the College assigned a certified athletic trainer to all men’s and women’s athletic teams. Although all of the athletic trainers were certified, the graduate assistants were less experienced than the College’s head athletic trainer and the assistant athletic trainers.

Though the College did not provide specific details on how it is determined which athletic trainers will be assigned to what team and how often, the head athletic trainer stated that it depends on the team’s schedule and the needs of the specific sport. Athletes responding to OCR’s survey about their experience in the College’s intercollegiate athletics program were asked to rate the quality and availability of the training provided to athletes during the 2014-15 school year using a scale of excellent, good, fair, or poor. Four football athletes, four softball athletes, two men’s track and field athletes, one women’s track and field athlete, and one soccer athlete rated the quality of the training as fair. Three football athletes, three soccer athletes, three women’s track and field athletes, two softball athletes, two men’s track and field athletes, one baseball athlete, and one basketball athlete rated the availability of the training as fair. One football athlete, one softball athlete, and one women’s track and field athlete rated the availability of the training as poor. The survey allowed athletes to identify any concerns they had with the training facilities and services provided during the 2014-15 school year. Many female soccer athletes expressed concerns regarding the access to trainers and services because of their shared season with football and stated that football often gets priority over soccer when it comes to use of the training facilities.

The concerns identified by the men’s and teams impact two men’s teams and two women’s team equally, and thus do not create a disparity in the College’s provision of training services and facilities in the men’s and women’s athletic program. However, in regards to soccer and football, which compete at the same time during the year, the seemingly overwhelming priority given to football, when both teams are in-season, creates a compliance concern regarding the availability of athletic trainers and training facilities.

Prior to the conclusion of OCR’s investigation, the College requested to voluntarily resolve this component. The attached agreement, when implemented, will resolve this concern.

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

In assessing compliance in this area, OCR considers the equivalence of men’s and women’s housing and dining facilities and services or other related special services provided for student 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 and athletes.

Housing

The College has seven on-campus residence options which are open to all qualifying students. All residence facilities are traditional dormitories with community bathrooms. According to the College, coaches, and athletes, the College does not assign athletes to particular on-campus housing facilities or floors within housing facilities. Bowen Hall will be closed during the 2016-17 school year so that it can be renovated. No coaches reported a housing preference for athletes on their teams or any concerns about College housing arrangements for athletes.

According to the College, first-time entering freshmen, including athletes, are required to live in on-campus housing for at least one full academic year unless they are age 20 or older; married; living with parents, legal guardian, or relatives; or have received an official waiver of this regulation from the Director of Residence Life. Freshman students commuting from home who later decide to move to the campus must move into a college residence hall for the remainder of the period of time that they are classified as a freshman.

All housing facilities are open free of charge during the pre-season for fall sports and during 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. All coaches who require athletes to report to campus prior to the first day of classes and during breaks stated that the athletes are allowed to stay in their dorms at no extra cost. 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 concern between the men's and women's athletics programs in the area of housing assignments.

Dining

The College use's Chartwell's Food Service to provide dining services on campus. The College requires all students living in the residence halls to participate in the College's food service program. Students who believe that individual circumstances warrant an exemption to this requirement are directed to contact the Residence Life Office.

Meal plan contracts are made for a period of one academic year. Students may indicate their choice of meal plan on their application for campus housing or at the time of registration. Changes in the type of meal plan may be made through the last day for enrollment each semester. Meal plan changes may not be made thereafter during the semester.

In general, there are no special dining facilities or services for athletes, and the meal plan options available to all athletes, male and female, are the same options at the same cost as those available to the general student body. A student not on a regular meal plan may purchase individual meals at the dining hall. OCR found no difference in the types of meal plan options or the adequacy of the meal plans provided to male and female athletes

As part of the College's contract with Chartwell's Food Service, the athletic department is provided 155 meals per meal time (breakfast, lunch and dinner) for 14 days prior to the start of classes. These meals are used for football, volleyball, soccer, and men's and women's cross country. Also meals for athletes who remain on campus during fall break are part of the food service contract. Meals are provided to the following in-season teams at no charge to the sport or athletic department during that time: football, volleyball, soccer, women's cross country, men's cross country, women's basketball, and men's basketball. If the cafeteria is not open due to a holiday or for some other reason, coaches reported that they are issued meal tickets/passes that athletes may use at local restaurants, such as pizza or sandwich shops. These are paid by the Athletic Department and are no cost to athletes.

No coaches or athletes expressed any concern over the dining arrangements made for student athletes when the College is not in session. Though some athletes seemed unsure about whether these costs were covered by the school or not, the concerns were expressed equally among both male and female athletes.

Overall, OCR determined that 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, provided at no additional cost to the athletes.

With regard to dining services provided to athletes, OCR found no difference in the types of meal plan options or the adequacy of the meal plans provided to male and female athletes. All meal plans are available at the same cost to the general student body. All coaches who require their athletes to report to campus prior to the first day of classes and during breaks stated that dining costs are paid for by the athletic department. No coaches or athletes expressed any concern over the dining arrangements made for athletes when the College is not in session. No coaches reported the availability of training table meals for athletes during the 2014-15 academic year. While there were minor differences between those teams who provided pre-game meals, OCR determined that those differences sufficiently offset each other, as the same number of men's teams and women's teams were provided with pre-game meals. OCR determined that the College is providing female and male athletes with equivalent housing and dining benefits under 34 C.R.R. § 106.41(c)(9).

Publicity - 34 C.F.R. § 106.41(c)(10)

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

The College did not provide any written policies and 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 College had two full-time sports information staff members: the sports information director and the graduate assistant for sports information. The sports information department also utilized 24 part-time or student workers during the 2014-15 school year.

The sports information director has worked in sports information at the College since 2004, and has worked as a sports editor for the local newspaper for two years, as well as the sports director for the local radio station for 15 years prior to coming to the College. The sports information director also serves as secretary for the Wayne State Athletic Hall of Fame.

According to the sports information director, he and the graduate assistant share responsibility for providing sports information services for home and away competitive events for the men's and women's athletic teams. Some of these responsibilities include:

- Keeping statistics (for home games) and updating (maintaining) the college's athletic website on a daily basis to provide information such as stats, photos, etc. to members of the media;
- Updating social media sites during the game(s);
- Writing stories; and
- Putting together media guides.

The sports information director stated that the sports information team covers all home sporting events and only travels minimally, usually when a team qualifies for the NCAA tournament. This was confirmed by the coaches through the OCR athletic survey. According to the sports information director, for away games, stories and updated statistics are posted on the College's website and provided to the media, once results are received.

OCR visited the College's website for athletics, including the webpages containing the archived stories for each of the College's intercollegiate athletic teams during the 2014-15 school year. OCR reviewed the archived stories and found that the College posted the following numbers of stories about each men's and women's team during the 2014-15 school year: baseball 45 stories, football 34 stories, men's basketball 25 stories, men's cross country 9 stories, men's track and field 38 stories, softball 59 stories, volleyball 76 stories, women's basketball 96 stories, women's cross country 9 stories, women's track and field 55 stories, and women's soccer 24 stories. The women's programs received a significantly higher number of stories than the men's programs, resulting in a disparity favoring women's programs. However, this disparity was due to nondiscriminatory factors, including, but not limited to, individual team success and individual player accolades.

The College provided OCR electronic copies of the 2014-15 media guides for each men's and women's athletic team. Each men's and women's team had its own media guide except for the men's and women's track and field teams and the men's and women's cross country teams which shared a single media guide. The College provided OCR a sample of all the 2014-15 posters, pocket schedules, and game day programs for each men's and women's athletic team.

Regarding publicity, although there were slight differences in the services provided to the men's and women's teams at home and away events during the 2014-15 school year, OCR determined overall the College provided comparable sports information and promotional services for the men's and women's programs at competitive events. OCR noted that the College provided web

stories of comparable number and quality for the men's and women's teams throughout the 2014-15 school year. The media guides were very comparable in quality, and although OCR noted some differences between the media guides for the men's and women's basketball teams, and the softball and volleyball teams, when compared to the others in regards to coach profiles, overall the media guides for all teams were comparable in length, content and quality. OCR found no significant difference between the treatment of male and female athletes in the joint track and field and cross country media guide. OCR also noted no differences between the team posters and pocket schedules the College provided for the men's and women's athletic teams. All of the game day programs provided for the represented men's and women's teams were comparable in quality and availability. Similarly, the radio coverage of the football, volleyball and men's and women's basketball games showed no disparities. Based on the above, OCR found no concerns in the College's provision of publicity between the men's and women's athletic programs. OCR determined that the College has provided publicity that is equivalent or equivalent in effect for the men's and women's athletic programs as required by 34 C.F.R. § 106.41(c)(10).

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

In assessing compliance in this area, OCR considers, among other factors, the equivalence for men'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.

According to the athletic director, the athletic department office assistant generally helped all of the teams with administrative and clerical/secretarial tasks. Most coaching staff handle their own secretarial work. The time spent on these tasks varied between the different teams, but was typically described as minimal by most coaches. There were no other individuals in the athletics department with responsibility for providing solely secretarial or clerical support to the athletics department or to intercollegiate athletic teams at the College. Most coaches reported completing most of these tasks themselves or within their own office staff. Direct administrative support was provided to all sport programs by the head athletic trainer/senior woman administrator, the assistant athletic director for business, the associate athletic director, the assistant athletic director for internal affairs, the sports information director, the office assistant, and the athletic director.

Head and assistant coaches for the men's and women's teams generally confirmed that they did not receive significant secretarial or clerical support from the athletic department. Coaches and assistant coaches consistently reported they performed all or most clerical tasks for their teams, particularly those related to recruiting and arranging travel.

During OCR's onsite visit, OCR confirmed the sharing of offices by certain team's coaches. With both the football and the men's basketball teams having assistant coaches who have their own offices compared to the volleyball and the softball teams assistant coaches having their own offices, OCR determined that the College is providing women and men athletes with equivalent support services. Based on the above, OCR found no concerns in the College's provision of support services between the men's and women's athletic programs. OCR determined that the

College has provided equivalent support services to the College's men's and women's intercollegiate athletic teams as required by 34 C.F.R. § 106.41(c).

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

In assessing compliance in this area, OCR considers the following:

1. Whether coaches or other professional athletic personnel serving men and women athletes are provided with substantially equal opportunities to recruit;
2. Whether the financial and other resources made available for recruitment to men's and women's teams are equivalently adequate to meet the need of each program; and
3. Whether the differences in benefits, opportunities, and treatment afforded to prospective 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 in survey responses 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: baseball 8, softball 7, men's basketball 35, women's basketball 21, football 41, volleyball 19, men's track/cross country 11, women's track/cross country 11, and women's soccer 15. During the 2014-15 school year, there were a total of 168 reported recruitment trips taken by men's and women's coaches. Coaches of men's teams took 95 recruiting trips which comprised 56.5% of the total recruiting trips taken by coaches for men's and women's teams. Coaches of women's teams took 73 recruiting trips which comprised 43.5% of the total recruiting trips taken by coaches for men's and women's teams. The percentage of recruiting trips for women's teams was slightly higher than the participation rate for the women's program.

According to information provided by coaches, all teams generally recruit athletes from the same regional area, including, but not limited to: Nebraska, Iowa, Kansas, Colorado, Minnesota, Missouri, and South Dakota. According to the College's data response, during the 2014-15 school year, coaches for four teams made recruiting trips outside the regional area described above. The head volleyball and assistant soccer coach made a recruiting trip to Chicago, Illinois; the head men's basketball coach made a recruiting trip to Las Vegas, Nevada; and the head football coach made a recruiting trip to Louisville, Kentucky. Several coaches reported in their surveys that athletes are typically recruited from the local region, but they are not restricted from

going outside of that region if they cannot find the athletes they need. Other coaches reported that they recruit athletes from the region because some athletes prefer to remain in closer proximity to their family and are able to drive home and many of the coaches are able to become familiar with the more local athletes by watching them compete in high school or at the club level.

Most of the coaches indicated they had adequate time to identify prospects, contact and communicate with prospects, and make recruiting trips to the locations of their choice. The assistant softball coach and the head men's and women's track coach mentioned that they feel somewhat limited in the amount of recruiting they can do because of the limited amount of staff they have.

Each men's and women's athletic team receives an annual allocation of funds for the operation of the team to be spent at the coach's discretion. However, according to the College's data response and excerpts provided from the "Athletic Department Financial Procedures Handbook," the budget allocation is distributed in "expenditure categories" which are tracked and reported to the head coaches on a monthly basis by the assistant athletic director for business management. One of these categories is "Recruiting." In the spring of each year, each head coach is asked to submit a budget request with estimates of anticipated expenses, including recruitment, for the upcoming fiscal year. A report of actual budget expenditures from the current fiscal year is provided to each head coach in advance of the budget request. The College stated that though the total funds allocated to a program are spent at the head coach's discretion, a team may supplement their base recruiting budget with realized savings in one of their other budget lines or with externally generated resources.

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 stated that they contact prospects using written correspondence, email, social media, and the telephone. None of the coaches expressed concerns regarding the College's provision of necessary resources and equipment to contact prospects, including laptops, cell phone stipends, landlines, and access to printers, copiers, and scanners. All coaches surveyed listed only coaching staff as those involved in the recruiting of individuals, apart from the occasional recommendation from an alumni.

All coaches stated that all travel expenses for recruiting trips were covered by the College, generally out of each team's allocated operating funds. Coaches reported using a variety of modes of transportation for recruiting trips, most often a rental car or program vehicle which were the least expensive modes of transportation available, and staying overnight at moderately priced hotels when needed. While most coaches surveyed by OCR indicated that they had no concerns regarding recruitment opportunities as a whole, the head softball coach, the head football coach, the men's and women's head and assistant track coaches, the men's and women's head basketball coaches, and the assistant volleyball coach expressed some concerns regarding inadequate financial resources. The head softball coach stated it would be nice to have enough to cover the longer road trips and allow for more official visits. The track and field coaches stated that they cannot effectively recruit with their budgeted amount and are routinely outbid by other schools. The head football coach and the men's and women's head basketball coaches all echoed the same sentiments. The assistant volleyball coach stated that he is unsure of the exact

budget for recruiting, but he knows that they run out of money very fast and so they have to stay as local as possible. He stated, however, that they are in the same position as most other sports at the College. The men’s head basketball coach stated that if his team had a little bigger budget he would be happy with their recruiting situation. The women’s head basketball coaches stated it would be nice to have slightly more money for recruiting, but the team was given a “respectable” amount.

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 that at least one coach came to watch them compete at least once during their recruitment and that they visited the campus at least once, usually receiving meals, lodging, and entertainment. Most athletes indicated that at least one coach maintained contact with him or her through written correspondence, email, social media, and the telephone throughout the recruiting process.

According to the College, during the 2014-15 school year until May 31, 2015, a total of \$73,227.98 was spent for recruitment. The chart below compares the amount of money spent on recruiting for the men’s and women’s athletic programs to the participation rates of men and women in the College’s intercollegiate athletics program.

2014-15 Comparison of Spending on Recruiting and Participation Rates

Program	Rate of Participation	Rate of Spending on Official Visits
Men	203 (58.2%)	\$40,389.37 (55.2%)
Women	146 (41.8%)	\$32,838.61 (44.8%)
Total	349	\$73,227.98

During the 2014-15 school year, the men’s teams spent \$40,389.37 which comprised 55.2% of the total expenditures for recruiting during the 2014-15 school year to May 31, 2015. The women’s teams spent \$32,838.61 which comprised 44.8% of the total expenditures for official visits to May 31, 2015. The lower percentage of expenditures for recruiting for women’s teams is the result of the larger numbers of recruiting trips by the football team. However, overall, the rate of spending on visits is more than proportionate to the rate of participation for the women’s teams. When comparing like situated teams, both the men’s and women’s basketball teams were allocated \$10,000 for recruitment. The softball team was allocated \$3,750 for recruitment, whereas the baseball team was allocated \$6,000. However, softball was allocated almost \$2,000 more for its total budget.

Benefits, Opportunities, and Treatment of Prospective Athletes

The College provided no specific data/information on the exact number of “official” or unofficial visits by prospective athletes to the College or the expenditures on such for the 2014-15 school year, apart from the total expenditures listed above. The College did provide excerpts from its “Recruitment” sections under its “Department Policies and Procedures Manual,” as well as the

“Athletic Department Financial Procedures Handbook.” The procedures stated that the College strictly follows the recruiting rules and regulations set forth by the NCAA and NSIC. The College sets forth detailed policy and procedures regarding recruiting timetables, contact, unofficial and official visits, recruiting travel (including use of vehicles, air travel, and meals), and recruiting meals in general.

As noted above, most athletes from both the men’s and the women’s programs 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 athletes indicated that at least one coach came to watch them compete at least once during their recruitment and that they visited the campus at least once, usually receiving meals, and on less frequent occasions, lodging and entertainment. Most athletes indicated that at least one coach maintained contact with him or her through written correspondence, email, social media, and the telephone throughout the recruiting process.

Coaches were asked in the surveys to indicate any concerns they had with recruitment, including opportunities to recruit, financial and other resources for recruitment, and opportunities afforded to prospective athletes, as well as how they compare to the other teams. No coaches expressed any concerns regarding the treatment or opportunities afforded to prospective athletes specifically. The only concerns expressed were those mentioned above in regards to financial/budgetary concerns and limited staff availability. Based on the information analyzed, OCR determined that the College has provided equivalent recruitment opportunities and services to the College’s men’s and women’s intercollegiate athletic teams as required by 34 C.F.R. § 106.41(c).

Notice of Nondiscrimination

The Age Discrimination Act, 42 U.S.C. § 6101, and its implementing regulation at 34 C.F.R. § 110.25(a) and (b); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. § 35.107(a); and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. § 104.8(a) and (b) require a notice of nondiscrimination that prohibits discrimination on the basis of age and disability, inclusion of the identity of the coordinator in the notice of nondiscrimination, and dissemination of the notice of nondiscrimination .

The College’s notice of nondiscrimination does not reference the Age Discrimination Act or Title II of the Americans with Disabilities Act of 1990 or identify a coordinator for the College’s compliance with the Age Discrimination Act, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

The College’s notice of nondiscrimination is posted on the College’s website in several areas, including the “About” page under the section “Who We Are” and subsection “Strategic Plan.” It is also posted in the employee and student online handbooks. However, it is not easily located in these areas as there are several subsections to access before a reader would reach the notice. Other than by searching the College’s website using the term “nondiscrimination,” it is not easily noticeable.

OCR determined that the preponderance of the evidence supported a conclusion that the College failed to comply with the applicable regulations in this area. Therefore, OCR finds the College in non-compliance regarding the notice of nondiscrimination. The attached agreement, when implemented, will resolve this area.

Based on the above, OCR determined the preponderance of the evidence established that the College failed to comply with Title IX regarding the accommodation of athletic interests and abilities; OCR also concluded that the College's Notice of Nondiscrimination failed to comply with the regulatory requirements.

OCR also determined the preponderance of the evidence established that there was insufficient evidence of a violation regarding the scheduling of games and practice times, travel and per diem allowance, the opportunity to receive academic tutoring and the assignment and compensation of tutors, the provision of housing and dining, publicity, support services, and recruitment. Before the conclusion of OCR's investigation, the College requested to resolve athletic financial assistance; equipment and supplies; the opportunity to receive coaching and the assignment and compensation of coaches; locker room, practice and competitive facilities; and medical and training facilities and services.

On November 17, 2016, the College signed the enclosed Agreement, which, when fully implemented, will resolve the non-compliance areas and the areas the College requested to resolve before the conclusion of OCR's investigation. The Agreement requires the College to evaluate its athletics program and determine if there are inequities and develop a plan to resolve those inequities with OCR's review and approval. In light of the signed Agreement, OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the College's implementation of the Agreement.

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.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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

Please be advised that the College may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

If you have any questions about this letter or OCR's resolution of this case, you may contact XXXXX XXXXX at (816) 268-XXXX (voice) and XXX.XXXX@ed.gov or XXXX XXXXX at (816) 268-XXXX and XXXX.XXXX@ed.gov, or (877) 521-2172 (telecommunications device for the deaf).

Sincerely,

/s/ Maria North

Maria North
Supervisory Attorney

Enclosure